accession 21842

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 104.

THEODORE H. VETTERLEIN, THEODORE J. VETTERLEIN AND BERNHARD T. VETTERLEIN, APPELLANTS,

vs

DEMAS BARNES, ASSIGNEE IN BANKRUPTCY OF THEODORE H. VETTERLEIN AND BERNHARD T. VETTERLEIN.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 *Bill of Complaint.*

United States District Court, Southern District of New York. In Equity.

Between DEMAS BARNES, as Assignee in Bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein, Complainant,

and

THEODORE H. VETTERLEIN, THEODORE J. VETTERLEIN, BERNHARD T. Vetterlein, Ætna Life Insurance Company, North America Life Insurance Company, New York Life Insurance Company, and Equitable Life Assurance Society, Defendants.

2 To the hon. the judge of the district court of the United States for the southern district of New York:

Demas Barnes, of the city of New York, a citizen of the State of New York, as assignee in bankruptcy of the estate and effects of Theodore H. Vetterlein and Bernhard T. Vetterlein, jointly and severally, brings this his bill of complaint in a cause arising under an act of the Congress of the United States approved the second (2d) day of March, eighteen hundred and sixty-seven (1867), entitled "An act to establish a uniform system of bankruptcy throughout the United States," against Theodore H. Vetterlein, of Philadelphia, in the State of Pennsylvania, and against Bernhard T. Vetterlein, of the city and county of New York, in the State of New York, and against Theodore J. Vetterlein, of Philadelphia aforesaid, and against the Ætna Life Insurance Company, a body politic and corporate created and existing under and by virtue of the laws of the State of Connecticut, and against the North America Life Insurance Company of New York, a body politic and corporate created and existing under and by virtue of the laws of the State of New York, and against the New York Life Insurance Company, a body politic and corporate existing under and by virtue of the laws of the State of New York, and against the Equitable Life Assurance Society, a body politic created and existing under and by virtue of the laws of the State of New York; and thereupon your orator complains and says that on or about the seventh (7th) day of February, eighteen hundred and seventy-one (1871), under and pursuant to the provisions of the said act of Congress, the said defendants, Theodore H. Vetterlein and Bernhard T. Vetterlein, as partners under the firm name of Th. H. Vetterlein & Sons, and also under the firm name of Vetterlein & Company, were jointly and severally duly adjudged to be bankrupts in and by a judgment and decree of this court, to which jurisdiction in that behalf belonged, which judgment and decree was duly rendered and made on or about the said seventh (7) day of February, eighteen hundred and seventy-one (1871), and still remains in full force and virtue, not vacated, reversed, nor in anywise impaired; and thereupon such proceedings were afterwards had in this court that on or about the first (1st) day of March, eighteen hundred and seventy-one (1871), your orator was, pursuant to

the provisions of said act, duly appointed to be the assignee in bankruptcy of the estate and effects of said bankrupts, jointly and severally; and your orator thereupon accepted such appointment and entered upon the performance of the duties devolved upon him thereby, and all the estate, real and personal, of the said bankrupts, jointly and severally, was thereupon duly assigned to, and the same has vested in, him as such assignee.

3 Your orator further shows that, as he is informed and believes and therefore alleges, one J. Kinsey Taylor was, at the time of the said adjudication of bankruptcy and of the appointment of your orator as such assignee as aforesaid, indebted to the said firm of Th. H. Vetterlein & Sons and Vetterlein and Company or one of them in the sum of fifty-one thousand dollars ($51,000) and upwards, and, in order to secure the payment of the said indebtedness, the said J. Kinsey Taylor had, at some time prior to the said adjudication of bankruptcy, procured, to be issued by the said defendants, The Ætna Life Insurance Company, The North America Life Insurance Company of New York, The New York Life Insurance Company, and The Equitable Life Assurance Society, policies of insurance upon the life of the said J. Kinsey Taylor, each of said last-mentioned defendants having issued and delivered to J. Kinsey Taylor one such policy. As your orator is informed and believes, the policy issued as aforesaid by the said Ætna Life Insurance Company was for the sum of ten thousand dollars ($10,000), to be paid to the personal representatives of the said J. Kinsey Taylor upon and in the event of the death of the said J. Kinsey Taylor; the policy issued by the said North America Life Insurance Company of New York was for the sum of twenty thousand dollars ($20,000), to be paid to the personal representatives of the said J. Kinsey Taylor upon the same event; the policy issued by the said New York Life Insurance Company was for the sum of twenty thousand dollars ($20,000), to be paid to the personal representatives of the said J. Kinsey Taylor upon the happening of the same event, and the policy issued by the said The Equitable Life Assurance Society was for the sum of twenty thousand dollars ($20,000), to be paid to the personal representatives of the said J. Kinsey Taylor upon the happening of the same event.

As your orator is informed and believes and therefore alleges, on or about the sixth (6th) day of July, eighteen hundred and sixty-seven (1867), at which time the aforesaid indebtedness of the said J. Kinsey Taylor to said bankrupts, or the larger portion thereof, was still in existence, the said J. Kinsey Taylor, for the purpose of securing the payment of the said indebtedness, assigned the said policies to the said Theodore H. Vetterlein, one of the said bankrupts, to be held by him as collateral security for the payment of the said indebtedness to the said bankrupts; afterwards, by agreement between the said Taylor and the said Theodore H. Vetterlein and the said insurance companies, respectively, or some or one of them, the aggregate amount of the said policies was reduced to a sum not exceeding, as your orator is informed and believes, ($20,000) twenty thousand dollars, and the aggregate amount now purporting to be

secured and payable by all the said policies is about the said sum of twenty thousand dollars ($20,000).

4 Your orator further shows that on or about the eighteenth (18) day of July, eighteen hundred and seventy (1870), the said Theodore H. Vetterlein, with the knowledge and consent of the said Bernhard T. Vetterlein, executed and delivered to the said Theodore J. Vetterlein and Bernhard T. Vetterlein an instrument or instruments, in writing, purporting and setting forth that the said Theodore H. Vetterlein had transferred, and did thereby transfer, to the said Theodore J. Vetterlein and Bernhard T. Vetterlein the said several policies of insurance and all sums of money payable or to become payable thereon, in trust, for the benefit of the wife and children of the said Theodore H. Vetterlein.

Your orator further shows that the said transfer and assignment or the said instrument or instruments purporting to be such transfer and assignment was and were made within six (6) months before the filing in this court against the said bankrupts of the petition upon which the said adjudication of bankruptcy was finally rendered, and the said Theodore H. Vetterlein was then insolvent and in contemplation of insolvency and bankruptcy; and the said Theodore J. Vetterlein and Bernhard T. Vetterlein then had reasonable cause to believe the said Theodore H. Vetterlein to be insolvent and to be acting in contemplation of insolvency, and that such instrument or instruments of assignment and transfer was and were made with a view to prevent the property of the said Theodore H. Vetterlein and of the said bankrupts from coming to their assignee in bankruptcy, and to prevent the same from being distributed under the said act of Congress, and to defeat the object of and in every way to impair, hinder, impede, and delay the operation and effect of the said act and to evade the provisions of such act; and the said instrument or instruments of transfer was and were not made in the usual and ordinary course of the business of the said debtor or debtors, but the same was and were made in fraud of the creditors of the said bankrupts, jointly and severally, and with intent to hinder, delay, and defraud all such creditors, as well *as* those having then actually existing claims against the said bankrupts as those to whom the said bankrupts should become afterwards indebted; and said Theodore J. Vetterlein and Bernhard T. Vetterlein had reasonable cause to believe that a fraud on the said act was intended, and the said instrument or instruments of assignment and transfer was and were wholly voluntary and without any actual valuable consideration paid or received therefor.

5 Your orator further shows that on or about the first (1st) day of July, eighteen hundred and seventy-one (1871), the said J. Kinsey Taylor departed this life, and thereupon the said Theodore J. Vetterlein and Bernhard T. Vetterlein, pursuant to the terms and conditions expressed in the said policies, respectively, filed with the said several companies, respectively, due proof of the death of the said J. Kinsey Taylor and made claim upon the said companies, respectively, for the payment of the amounts purporting to be payable upon the said policies, respectively, and the said com-

panies thereupon, severally and respectively and each for itself, agreed to make payment according to such requirements; that the time for making such payment has not yet arrived, but that the said several companies threaten and intend to and give out that they will make payment of the amount accruing on said policies, respectively, to Theodore J. Vetterlein and Bernard T. Vetterlein, and deny the right of your orator to any portion of the proceeds of said policies, although your orator has made known to said companies, respectively, his rights in the premises, and has demanded payment of the amount of said policies, respectively, by means of which acts of the defendants severally your orator is prevented from coming into possession of the said policies and of the proceeds thereof, and is hindered, impeded, and delayed in the realization, collection, and distribution of so much of the estate of the said bankrupts.

To the end, therefore, that the defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, according to the best and utmost of their several and respective knowledge, remembrance, information, hearsay, and belief, full, true, direct and perfect answer make to the several charges and allegations in this bill contained, and that as fully and particularly as if the same were here repeated and they thereunto specifically interrogated; and that the said transfers and assignments may be as against your orator adjudged to be absolutely void and the said policies and the proceeds thereof, and the right to collect the amount accrued or accruing thereon, may be adjudged to have become vested in your orator by virtue of his appointment as aforesaid and the aforesaid proceedings thereon, and that the defendants may be decreed to account to your orator for the said policies and proceeds thereof, respectively, with the amounts accrued or accruing thereon, and that a receiver thereof pending this bill be appointed by your honor, with all the usual powers of such receivers in like cases; and that pending this bill and the final decree of the court thereon the defendants, Theodore J. Vetterlein and Bernhard T. Vetterlein, may be restrained and enjoined from in any manner collecting any portion of any of the sums payable upon the said policies, respectively;

and the said defendants, The Ætna Life Insurance Company,
6 The North America Life Insurance Company, The New York Life Insurance Company, and The Equitable Life Assurance Society, may be restrained and enjoined from paying to the said Theodore J. Vetterlein and Bernard T. Vetterlein, or any person other than your orator or to a receiver duly appointed in this suit, any portion of any sum accruing or accrued upon any policy issued by them or either of them upon the life of the said J. Kinsey Taylor and assigned or purported to be assigned by him to the said Theodore H. Vetterlein, or assigned or purporting to be assigned by the said Theodore H. Vetterlein to the said Theodore J. Vetterlein and Bernhard T. Vetterlein or either of them, and that your orator may have such further or other or different relief as the nature of his case may require and to your honor may seem meet—

May it please your honor, the premises considered, to grant unto

your orator not only the writ of injunction issued out of this court and under the seal thereof, addressed to the said defendants, restraining and enjoining them pending this bill, pursuant to the prayer thereof, but also the writ of subpœna issued out of this court and under the seal thereof, addressed to the said defendants and each of them, commanding them and each of them, under a certain penalty and by a certain day therein to be expressed, to be and appear before this honorable court, and there to answer to your orator's said bill of complaint, and to do further and abide by whatever this honorable court shall then direct.

And your orator will ever pray, &c.

JAMES K. HILL,
Pl'ff's Solicitor.

F. N. BANGS,
Of Counsel for Pl'ff.

UNITED STATES OF AMERICA,
Northern District of New York, } ss:

Demas Barnes, being duly sworn, deposes and says that, as assignee, &c., of Theodore H. Vetterlein and Bernhard T. Vetterlein, he is the plaintiff in the foregoing bill of complaint named; that he has read the said bill and knows the contents thereof and that the same is true to his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true; and he further says that unless a writ of injunction shall issue forthwith according to the prayer of said bill he verily believes that he will sustain great and irreparable damage by reason of the infringement of his rights above complained of.

DEMAS BARNES.

Sworn to before me this 5th day August, 1871.
[SEAL.]
J. A. COREY,
United States Commissioner in and for
The Northern District of New York.

Filed August 10, 1881.

7 *Answers.*

The separate answer of Bernhard T. Vetterlein and Theodore J. Vetterlein, two of the defendants, to the bill of complaint of Demas Barnes, of the city of New York, assignee in bankruptcy of the estate of Theodore H. Vetterlein and Bernhard T. Vetterlein.

To the honorable the judge of the district court of the United States in and for the southern district of New York:

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and

such parts thereof as they are advised is or are material or necessary for them to make answer unto, answering, say as follows, viz:

It is true, as in said bill alleged, that on or about the 7th day of February, 1871, under and pursuant to the provisions of the said act of Congress, the said defendants, Theodore H. Vetterlein and Bernard T. Vetterlein, as partners under the firm name of Th. H. Vetterlein and Sons, and also under the firm name of Vetterlein and Company, were jointly and severally duly adjudged to be bankrupts in and by a judgment and decree of this court, to which jurisdiction in that behalf belonged, which judgment and decree were duly rendered and made on or about the 7th day of February, 1871, and still remain in full force and virtue, not vacated, reversed, nor in anywise impaired; and thereupon such proceedings were afterwards had in this court that on or about the 1st of March, 1871, the complainant in the bill in this case filed was, pursuant to the provisions of said act, duly appointed to be the assignee in bankruptcy of the estate and effects of said bankrupts, jointly and severally; and true it is, as in said bill further alleged, that the said complainant thereupon accepted such appointment and entered upon the performance of the duties which thereby devolved upon him as such, and all the estate of the said bankrupts, jointly and severally, was thereupon duly assigned to and the same became and was vested in him as such assignee.

8 And these defendants further say that it is not true that one J. Kinsey Taylor was, at the time of the said adjudication of bankruptcy and of the appointment of said complainant as such assignee as aforesaid, indebted to the said firm of Theodore H. Vetterlein and Sons and Vetterlein and Company or one of them in the sum of ($51,000.00) fifty-one thousand dollars and upwards, and that in order to secure the payment of said indebtedness said Taylor had, at some time prior to said bankruptcy, procured to be issued the policies of insurance upon his life in said bill first mentioned. The following are the facts connected with the indebtedness of said Taylor and the issuing of the life policies to secure the same:

In and prior to the month of July, 1869, there was a firm doing business in the city of Philadelphia under the name of Vetterlein and Company, composed of the said Theodore H. Vetterlein, these defendants, and one Charles A. Meurer. From a period beginning in or prior to the year 1867 said firm of Vetterlein and Company assisted said Taylor by lending him its money and acceptances until, on the 6th day of July, 1869, his indebtedness to the said firm amounted to over $46,000.00, and said indebtedness has now reached the sum of over $50,000.00.

In or about the summer of the year 1867 said Taylor, for the security of said firm, caused his life to be insured in the following offices and for the following amounts, viz:

New York Life Insurance Company	$20,000 00
The Ætna Life Insurance Co. of Hartford	10,000 00
The North America Life Insurance Co.	20,000 00

And assigned the policies issued by these companies to said Theodore H. Vetterlein, to be held by him to secure said Taylor's general current indebtedness to said firm of Vetterlein and Company. These defendants have no knowledge except from information of any insurance by said Taylor in the Equitable Life Insurance Co., and neither they nor the said firm ever held such a policy.

The loans and advances to said Taylor continued after said policies were so issued, his said indebtedness increased, and he became unable to pay the annual premiums on said policies. Agreements were made by and between said parties and the said companies, respectively, by which new and paid-up policies were issued by two of the companies for reduced amounts, and the other company allowed its old policy to stand reduced by an endorsement. This arrangement required very small annual payments, in the way of interest, on notes held by said companies for premiums on the original policies. The dates and amounts of these reduced policies were as follows, viz:

9	New York Life Insurance Company, July 20th, 1869	$4,000 00
	Ætna Life Insurance Co., original policy for $10,000, dated June 24th, 1867, not cancelled or surrendered, but by endorsement, dated July 24th, 1869, reduced to	$2,000 00
	North America Life Insurance Co., July 17th, 1869	4,000 00

These reduced policies came to and remained in the hands of said Theodore H. Vetterlein to secure said debt of said Taylor to said firm of Vetterlein and Co. In July, 1869, said Meurer left said firm of Vetterlein & Co., and in December of the same year this defendant, Theodore J. Vetterlein, also left said firm. By these withdrawals said firm was dissolved and went into liquidation, but the remaining partners, who were the liquidating partners, went on with the business at the same place, under the same name, and with the same stock of merchandise, which they took at a valuation, and the affairs of said first firm of Vetterlein and Co., the debts of which are paid, which is and always has been entirely solvent, and of which the said Theodore J. Vetterlein is at present the only solvent partner, have never been settled. The said Theodore J. Vetterlein has received nothing on account of his interest in said first firm but a few hundred dollars for his expenses in Europe; the said Meurer left the firm indebted to it, and would be entitled to nothing on a settlement, and said Theodore H. and Bernard T. Vetterlein, the liquidating partners, have really received and applied to their own use the great bulk of the assets of said firm, amounting to nearly two hundred thousand dollars, leaving as the share of this defendant, Theodore J. Vetterlein, of the said original assets only said policies and a few outstanding debts, scarcely more than enough, if sufficient at all, to satisfy his interest in the firm, which these defendants verily believe will be more than twenty thousand dollars. These defendants are advised, therefore, and believe, and on such advice and belief aver, that said policies and other remaining assets of said first firm are, at least to the extent of his interest therein,

simply and entirely the property of the defendant, Theodore J. Vetterlein.

And these defendants further say that for these reasons the title to said policies never passed to or vested in the said plaintiff as part of the estate of said bankrupts or any of them, and that said transfer to the use of the wife and children of the said Theodore H. Vetterlein, whether valid or invalid, worked no injury to the creditors of said bankrupts.

And these defendants further say that in the month of July, 1870, said policies being so the unadministered assets of said first firm and the property in equity of this defendant, Theodore J. Vetterlein, were, without his knowledge or assent, transferred by his said father to him and said Bernard T. Vetterlein, as trustees for his mother and her children; and these defendants are advised and believe that if said Theodore J. Vetterlein does not assent to said transfer he can hold said policies to make good his interest in said firm, and that if he does assent to and approve of said transfer in trust it is a gift by him to his mother and her children, and not a gift by his father, and that he will only be charged with said policies as between himself and his said firm in the final settlement.

And these defendants further say that even if said policies had been, in July, 1870, the property of said bankrupts or one of them, or of their said firms or either of them, neither said Theodore H. Vetterlein nor said Bernhard T. Vetterlein nor their said firms had reason to believe that they or any of them were insolvent, nor were they in fact insolvent or acting in contemplation of insolvency, nor were said transfers of said policies made to prevent the said policies from coming to their assignee in bankruptcy, nor from being distributed under the said act of Congress, nor to defeat the object of, impair, hinder, impede, nor delay the operation or effect of said act, nor to evade the provisions thereof, nor were said assignments made in fraud of creditors of the said bankrupts, their said firms, nor with intent to delay, hinder, or defraud any of them, nor had these defendants or either of them any cause to believe that a fraud on said act was intended. In the month of May, 1870, the New York house of said bankrupts, being temporarily embarrassed and unable to meet certain cash payments without a sacrifice, which they desired to avoid, called together their creditors, who appointed a committee to examine into the affairs of said firm. The result of said examination was a report, a copy of which is hereto annexed, marked "A," which these defendants pray may be taken as part of this answer. Said report is signed by the complainant, who was one of said committee, and is true in every respect. It was subsequently, as appears by said copy, ratified and approved by all the creditors to a very large amount.

Said report shows that said New York firm was then entirely solvent and had ample property to meet all its debts, wholly irrespective of said policies or any of them. The subsequent insolvency and ultimate bankruptcy of said parties was caused by the destruction by fire of very valuable property and losses arising from the

European war and otherwise, all occurring after the date of the said report.

11 And these defendants further say that it is true that the said Taylor is dead; that they filed proofs of his death with the said insurance companies and made claims for the payment of the amounts due on said policies; that said companies agreed to make payment to them when the times therefor arrived, and, as these defendants hope and believe, will do so. Whether the complainant has made any demand upon them, or, if he has, what answer they have made to him, these defendants do not know save by said bill; and these defendants are advised and believe that said complainant has no right or title to the relief in and by said bill sought; they deny all the fraud therein alleged, and they pray to be hence dismissed with their reasonable costs, &c.

JOSEPH GUTMAN, JR.,
Solicitor for Def'ts, Bernhard T. Vetterlein and Theodore J. Vetterlein.

Bernhard T. Vetterlein and Theodore J. Vetterlein, defendants above named, being duly sworn, say that the above answer and the facts therein set forth, so far as the same are stated of their own knowledge, are true, and so far as the same are stated upon the advice or information of others are true to the best of their knowledge and belief.

THEO. J. VETTERLEIN.
BERN. T. VETTERLEIN.

Sworn and subscribed this 5th day of September, 1871.
CHARLES P. CLARKE,
U. S. Com'r.

12 EXHIBIT A.

The undersigned, a committee appointed by the creditors of Messrs. Th. H. Vetterlein and Sons, of New York, beg leave to report that after an examination of the statements made of said business, showing the assets and liabilities, we find, after leaving each the Philadelphia and New York house all their present stock and merchandise and deducting 25 per cent. from all the accounts and bills receivable, there will be remaining in bills receivable, open accounts, and cash about $241,347.87. In addition to the above they have stated merchandise, bonds, mortgages, real estate, interest in steam vessels, &c., estimated to be worth some $264,788.41. The aggregate liabilities of the two houses—of Vetterlein & Co., of Philadelphia, and Th. H. Vetterlein & Sons, of New York—amount to $310,399.23, showing an excess of $195,740.05, of undoubted value, over all liability, besides leaving a large margin contingent, much of which they think may be collected in time by attention, and now they propose to give extension notes to each creditor as follows: 30 per cent. at 4 months, 20 per cent. at 6 months, 20 per cent. at 8 months, 20 per cent. at 10 months, and 10 per cent. at 12 months, including interest for the time asked in said extension.

We therefore recommend to the creditors the acceptance of the terms proposed, and that the debts of sums under $1,000 be excluded from the extension and paid in cash as soon as possible.

New York, May 24, 1870.

CH'S F. TAG.
JOHN ATWOOD.
DEMAS BARNES.
WILLIAM V. CATHWOOD.
W. T. AGNEW.

The report of the committee as set forth on the opposite page is accepted and agreed to by the undersigned, creditors of Vetterlein & Sons, of New York:

CHAS. F. TAGG.
J. LOHN ATWOOD.
WM. J. V. ATWOOD.
DEMAS BARNES.
H. V. MURRAY.
STROHM & RUGENHEIM,
J. S. GANS & SON.
B. VETTERLEIN,
By B. T. VETTERLEIN.
JULIUS SARDMANN & CO.,
By B. T. VETTERLEIN.
For FATMAN & CO.,
Pr. RAYLER.
W. AGNEW & SONS.
AMERICAN NAT. BANK OF HARTFOBD, CONN.,
Per C. F. SIMPSON, *Cashier.*
T. J. S. FLINT.

13 The signatures of the undersigned, W. Agnew & Sons and Fatman & Co., are subject to the condition that all the creditors of Vetterlein & Sons join and sign this agreement, and also that in case of failure on part of Vetterlein & Sons to meet promptly the different instalments as above mentioned, then remaining balance of indebtedness shall at once fall due. The signatures of the creditors apply only to those whose amount exceeds one thousand dollars.

H. FATMAN, *New York.*
W. AGNEW & SONS.

Filed Sept. 6, 1871.

The separate answer of Theodore H. Vetterlein, one of the defendants, to the bill of complaint of Demas Barnes, of the city of New York, assignee in bankruptcy of the estate of Theodore H. Vetterlein and Bernhard T. Vetterlein.

To the honorable the judge of the district court of the United States in and for the southern district of New York:

This defendant, now and at all times hereinafter mentioned, saving and reserving unto himself all benefit and advantage of excep-

tion which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering, says as follows:

It is true, as in said bill alleged, that, on or about the 7th day of February, 1871, under and pursuant to the provisions of the said act of Congress, the said defendants, Theodore H. Vetterlein and Bernhard T. Vetterlein, as copartners under the firm name of Theodore H. Vetterlein & Sons, and also under the firm name of Vetterlein & Company, were jointly and severally duly adjudged to be bankrupts in and by a judgment and decree of this court, to which jurisdiction in that behalf belonged, which judgment and decree were duly rendered and made on or about the said 7th day of February, 1871, and still remain in full force and virtue, not vacated, reversed, or in anywise impaired; and thereupon such proceedings were afterwards had in this court that on or about the first day of March, 1871, complainant in the bill in this case filed was, pursuant to the provisions of said act, duly appointed to be the assignee in bankruptcy of the estate and effects of said bankrupts, jointly and severally, and true it is, as in said bill further alleged, that the said complainant thereupon accepted such appointment and entered upon the duties which thereby devolved upon him as such, and all the estate of the said bankrupts, jointly and severally, was thereupon duly assigned to, and the same became and vested in, him as such assignee.

14 And this defendant further says that it is not true that one J. Kinsey Taylor was, at the time of this said adjudication of bankruptcy and of the appointment of said complainant as such assignee as aforesaid, indebted to the said bankrupt firms of Theodore H. Vetterlein & Sons and Vetterlein and Company or one of them in the sum of $51,000 and upwards, and that in order to secure the payment of said indebtedness said Taylor had, at some time prior to said bankruptcy, procured to be issued the policies of insurance upon his life in said bill first mentioned. The following are the facts connected with the indebtedness of said Taylor and the issuing of the life policies to secure the same.

In and prior to the month of July, 1869, there was a firm doing business in the city of Philadelphia, under the name of Vetterlein and Company, composed of this defendant, Bernard T. Vetterlein, Theodore J. Vetterlein, and one Charles A. Meurer. From a period beginning in or prior to the year 1867, said firm of Vetterlein & Co. assisted said Taylor by lending him its money and acceptances until, on the 6th day of July, 1869, his indebtedness to the said firm amounted to over $46,000, and said indebtedness has now reached the sum of over $50,000.

In or about the summer of the year 1867 said Taylor, for the security of said firm, caused his life to be insured in the following offices and for the following amounts, viz:

New York Life Insurance Co.	$20,000 00
The Ætna Life Insurance Co. of Hartford	10,000 00
The North America Life Insurance Co.	20,000 00

And assigned the policies issued by these companies to this defendant, to be held by him to secure said Taylor's general current indebtedness to said firm of Vetterlein and Company.

This defendant has no knowledge except from information of any insurance by said Taylor in the Equitable Life Insurance Co., and he never held such a policy.

The loans and advances to said Taylor continued after said policies were so issued, his said indebtedness increased, and he became unable to pay the annual premiums on said policies. Agreements were made by and between said parties and the said companies, respectively, by which new and paid-up policies were issued for reduced amounts by two of the companies, and the other company allowed its old policy to stand reduced by an endorsement. This arrangement required very small annual payments in the way of interest on notes held by said companies for premiums on the original policies. The dates and amounts of those reduced policies were as follows, viz:

15	New York Life Insurance Company, July 20, 1869	$4,000
	Ætna Life Insurance Company, original policy for $10,000, dated June 24th, 1867, not cancelled or surrendered, but by endorsement, dated July 24th, 1869, reduced to	2,000
	North America Life Insurance Company, July 17, 1869	4,000

These reduced policies came to and remained in the hands of this defendant to secure said debt of said Taylor to said firm of Vetterlein & Co. In July, 1869, said Meurer left said firm of Vetterlein & Co., and in December of the same year Theodore J. Vetterlein also left said firm.

By these withdrawals said firm was dissolved and went into liquidation, but this defendant and Bernard T. Vetterlein, the remaining partners, who were the liquidating partners, went on with the business at the same place, under the same name, and with the same stock of merchandise, which they took at a valuation, and the affairs of said first firm of Vetterlein & Co., the debts of which are paid, which is and always has been entirely solvent and of which the said Theodore J. Vetterlein is at present the only solvent partner, have never been settled.

The said Theodore J. Vetterlein has received nothing on account of his interest in said firm but a few hundred dollars for his expenses in Europe. The said Meurer left the firm indebted to it and would be entitled to nothing on a settlement, and this defendant and said Bernard T. Vetterlein, the liquidating partners, have really received and applied to their own use the great bulk of the assets of said firm, amounting to nearly $200,000, leaving as the share of said defendant, Theodore J. Vetterlein, of the said original assets only said policies and a few outstanding debts, scarcely more than enough, if sufficient at all, to satisfy his interest in the firm, which this defendant verily believes will be more than $20,000.00. This defendant is advised, therefore, and believes, and on such advice and belief avers, that said policies and other remaining assets of said first firm

are, at least to the extent of the interest of said Theodore J. Vetterlein in said firm, simply and entirely the property of the said Theodore J. Vetterlein; that the title to said policies never passed to or vested in the said plaintiff as part of the estate of said bankrupts or any of them, and that said transfer to the use of the wife and the children of this defendant, whether valid or invalid, worked no injury to the creditors of said bankrupts.

16 And this defendant further says that in the month of July, 1870, said policies being so the unadministered assets of said first firm and the property in equity of said defendant, Theodore J. Vetterlein, were, without the knowledge or assent of Theodore J. Vetterlein, transferred by this defendant to him, the said Theodore J. Vetterlein and said Bernhard T. Vetterlein, as trustees for their mother and her children; and this defendant is advised and believes that said Theodore J. Vetterlein is not bound or affected by said transfers; that if he does not assent thereto he can hold said policies to make good his interest in said firm, and that if he does assent to and approve of said transfer in trust it is a gift by him to his mother and her children, and not a gift by this defendant, and that the said Theodore J. Vetterlein will only simply be charged with said policies as between himself and his said firm in the final settlement.

And this defendant further says that even if said policies had been in July, 1870, the property of said bankrupts or one of them, or of their said firms or either of them, neither this defendant nor said Bernhard T. Vetterlein nor their said firms had reason to believe that they or any of them were insolvent, nor were they in fact insolvent or acting in contemplation of insolvency, nor were said transfers of policies made to prevent the said policies from coming to their assignee in bankruptcy, nor from being distributed under the said act of Congress, nor to defeat the object of, impair, hinder, impede, or delay the operation of or effect of said act, nor to evade the provisions thereof, nor were said assignments made in fraud of creditors of the said bankrupts or their said firms, nor with intent to delay, hinder, or defraud any of them, nor had the defendants or either of them any cause to believe that a fraud on said act was intended.

In the month of May, 1870, the New York house of said bankrupts, being temporarily embarrassed and unable to meet certain cash payments without a sacrifice, which they desired to avoid, called together their creditors, who appointed a committee to examine into the affairs of said firm. The result of said examination was a report, a copy of which is hereto annexed, marked "A," which this defendant prays may be taken as part of this answer. Said report is signed by the complainant, who was one of said committee, and is true in every respect. It was subsequently, as appears by said copy, ratified and approved by all of the creditors.

Said report shows that said New York firm was then entirely solvent and had ample property to meet all debts, wholly irrespective of said policies or any of them.

17 The subsequent insolvency and the ultimate bankruptcy

of said parties was caused by the destruction by fire of very valuable property and losses arising from the European war and otherwise, all occurring after the date of said report.

And the defendant further says that it is true that the said Taylor is dead; that proofs of his death have been filed with the said insurance companies and claims have been made for the payment of the amounts due on said policies; that said companies agreed to make payment when the time arrived, and, as the defendant hopes and believes, will do so. Whether the complainant has made any demand upon them, or, if he has, what answer they have made to him, this defendant does not know save by said bill.

And this defendant is advised and believes that said complainant has no right or title to the relief in and by said bill sought. He denies all the fraud therein alleged, and prays to be hence dismissed with his reasonable costs.

JOSEPH GUTMAN, JR.,
Sol. for Th. H. Vetterlein.

Theodore H. Vetterlein, the defendant above named, being duly sworn, says that the above answer and the facts therein set forth, so far as the same are stated of his own knowledge are true, and so far as the same are stated upon the advice or information of others are true to the best of his knowledge and belief.

THEO. H. VETTERLEIN.

Sworn and subscribed before me this 6th day of September, A. D. 1871.

CRAIG BIDDLE,
U. S. Comm'r.

EXHIBIT A.

The undersigned, a committee appointed by the creditors of Messrs. Th. H. Vetterlein and Sons, of New York, beg leave to report that, after an examination of the statements made of said business, showing the assets and liabilities, we find, after leaving each the Philadelphia and New York house all their present stock and merchandise and deducting 25% from all the accounts and bills receivable, there will be remaining in bills receivable, open accounts, and cash about $241,347.87. In addition to the above they have stated merchandise, bonds, mortgages, real estate, interest in steam vessels, &c., estimated to be worth some $264,788.41. The aggregate liabilities of the two houses—of Vetterlein & Co., of Philadelphia, and Th. H. Vetterlein & Sons, of New York—amount to $310,399.23, showing an excess of $195,740.05 of undoubted value over all liability, besides leaving a large margin contingent, much of which they think
18 may be collected in time by attention, and now they propose to give extension notes to each creditor as follows: 30% @ 4 mos., 20% @ 6 mos., 20% @ 8 mos., 20% @ 10 mos., and 10% @ 12 mos., including interest for the time asked in said extension.

We therefore recommend to the creditors the acceptance of the terms proposed, and that the debts of sums under $1,000 be excluded from the extention and paid in cash as soon as possible.

New York, May 24th, 1870.

CH'S F. TAG.
JOHN ATWOOD.
DEMAS BARNES.
WM. J. C. ATTWOOD.
M. T. AGNEW.

The report of the committee as set forth on the opposite page is accepted and agreed to by the undersigned creditors of Vetterlein & Sons, of New York:

CHAS. F. TAG.
J. S. M. ATWOOD.
DEMAS BARNES.
WM. J. M. ATWOOD.
H'Y HEMMINWAY.
STROM & KITZENHEIM.
J. S. GANS & SON.
B. VETTERLEIN,
By B. T. VETTERLEIN.
JULIUS SANDMAN & CO.,
By B. T. VETTERLEIN.
JOS. FATMAN & CO.,
Per KAYBON.
W. AGNEW & SONS.
AMER. NAT. BANK OF HARTFORD, CONN.,
Per C. F. SIMPSON, *Cash.*
T. J. S. FLINT.

The signatures of the undersigned, W. Agnew & Sons and Fatman & Co., are subject to the condition that all the creditors of Vetterlein & Sons join and sign the agreement, and also that in case of failure on part of Vetterlein & Sons to meet promptly the different installments as above mentioned their remaining balance of indebtedness shall at once fall due. The signatures of the creditors apply only to those whose amount exceeds one thousand dollars.

W. FATMAN & CO.,
New York.
W. AGNEW & SONS,
New York.

Filed Sept. 7, 1871.

19 At a stated term of the district court of the United States for the southern district of New York, held at the court-rooms thereof, in said district, on the 12th day of September, 1871.

Present: Hon. Samuel Blatchford, district judge.

DEMAS BARNES, as Assignee in Bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein, Bankrupts,

against

THEODORE H. VETTERLEIN, THEODORE J. VETTERLEIN, BERNHARD T. VETTERLEIN, *et al.*

An order having heretofore been made on the 9th day of August, 1871, requiring the defendants, Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernhard T. Vetterlein, to show cause why a receiver should not be appointed as prayed for in and by the bill of complaint filed in this suit, after the reading of the said bill of complaint, the affidavits of Lewis Fatman and James K. Hill to said bill annexed, on the part of the complainant, and on reading the answers of the defendants, Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernhard T. Vetterlein, to said bill filed in said action, and due deliberation being had in the premises:

It is hereby ordered that John Sedgwick, Esq., be, and is hereby, appointed a special receiver pending this cause and until the final decree or further order of this court herein of all and singular the the four policies of insurance on the life of J. Kinsey Taylor, now deceased, mentioned and referred to in the bill of complaint and answers herein and issued by the Ætna Life Insurance Company of Hartford, Connecticut, the New York Life Insurance Company, the North America Life Insurance Company, and the Equitable Life Assurance Society of New York, defendant corporations herein, respectively.

And it is further ordered that the defendants, Theodore J. Vetterlein and Bernhard T. Vetterlein, do, upon the service upon them of a copy of this order, forthwith transfer and deliver to the said special receiver all of the said four policies of insurance.

And it is further ordered that the said special receiver proceed at once to collect the said policies from the several and respective insurance companies issuing the same.

And it is further ordered that before entering upon his duties as such the said special receiver file with the clerk of this court a bond, with sufficient surety, to be approved by the clerk of this court as to form and sufficiency thereof, in a penal sum to be fixed by said clerk, conditioned for the faithful performance by said special receiver of his duties as such, and for the accounting for all moneys and property that shall come into his possession and the disposition made thereof.

SAMUEL BLATCHFORD.

Filed September 12th, 1871.

Replications.

United States District Court, Southern District of New York. In Equity.

The replication of Demas Barnes, as assignee, &c., complainant, to the separate answer of Theodore J. Vetterlein and Bernhard T. Vetterlein to the complainant's bill of complaint exhibited against Theodore H. Vetterlein, the Ætna Insurance Company of Hartford, Connecticut, the North American Life Insurance Company, the New York Life Insurance Company, and the Equitable Life Assurance Society of New York, with themselves as defendants.

This repliant, saving and reserving unto himself all and all manner and advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith—

That he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his bill he hath already prayed.

JAS. K. HILL,
Solicitor for Complainant.

F. N. BANGS,
Of Counsel for Pl'ff.

Filed September 26, 1871.

21 United States District Court, Southern District of New York. In Equity.

The replication of Demas Barnes, as assignee, &c., complainant, to the separate answer of Theodore H. Vetterlein to the complainant's bill of complaint exhibited against Theodore J. Vetterlein, Bernhard T. Vetterlein, the Ætna Life Insurance Company of Hartford, Connecticut, the North America Life Insurance Company, the New York Life Insurance Company, and the Equitable Life Assurance Society of New York, with himself as defendant.

This repliant, saving and reserving unto himself all and all manner and advantage of exception to the manifold insufficiencies of the said answer, for replication thereto saith—

That he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed or avoided, traversed or

denied, is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his bill he hath already prayed.

JAS. K. HILL,
Solicitor for Complainant.

F. N. BANGS,
Of Counsel for Pl'ff.

Filed September 26, 1871.

22 United States District Court, Southern District of New York.
Oct. 16, 1871. In Equity.

DEMAS BARNES, as Assignee, &c.,
against
THE ÆTNA LIFE INSURANCE COMPANY *et al.*

The subpœna issued in the above-entitled cause having been duly served on the defendants, The Ætna Life Insurance Company, The New York Life Insurance Company, and The North America Life Insurance Company, and no answer or demurrer or plea having been filed by said defendants, and the time to answer having expired, now, on motion of James K. Hill, plaintiff's solicitor, it is ordered that the bill be, and the same hereby is, taken *pro confesso* against said defendants for want of answer, plea, or demurrer.

SAMUEL BLATCHFORD.

Filed Oct. 16, 1871.

At a stated term of the district court of the United States of America for the southern district of New York, held at the United States court-rooms, in the city of New York, on the 16th day of October, in the year of our Lord one thousand eight hundred and seventy-one.

Present: The Hon. Samuel Blatchford, district judge.

DEMAS BARNES, as Assignee, &c.,
against
THE ÆTNA LIFE INSURANCE COMPANY *et al.* } In Equity.

On reading and filing the foregoing copy rule and the consent hereto annexed, and on motion of James K. Hill, solicitor for the complainant, it is hereby ordered that Henry Wilder Allen, Esq., be, and he hereby is, appointed special examiner in the above-entitled suit, before whom testimony therein shall be taken pursuant to the 67th rule of the Supreme Court of the United States, in equity.

Witness the Honorable Samuel Blatchford, judge of the said court, and the seal thereof, at the court-rooms in said district, this 16th day of October, A. D. 1871.

[SEAL.] GEORGE F. BETTS, *Clerk.*

Filed Oct. 16, 1871.

23 At a stated term of the district court of the United States for the southern district of New York, held at the court-room of said court on the 7th day of March, 1872.

Present: Hon. Samuel Blatchford, J.

DEMAS BARNES, as Assignee, &c.,

vs.

THE ÆTNA LIFE INSURANCE COMPANY and *al.*

On reading and filing the consent of the solicitors for the respective parties, it is—

Ordered, That John Sedgwick, the receiver appointed in this cause, be, and he hereby is, authorized to withdraw, from the funds on deposit to his credit, the sum of two hundred and five dollars for his commissions on the money collected by him as such receiver and the further sum of eleven dollars and sixty cents for the amount disbursed by him as expenses to this date in the execution of his trust as such receiver.

SAM'L BLATCHFORD.

We consent to the entry of the within order.

JOSEPH GUTMAN, JR.,
Sol'r for Def'ts, B. F. and T. J. Vetterlein.
JAS. K. HILL,
Solicitor for Complainant.

Filed March 7, 1872.

At a stated term of the district court of the United States for the southern district of New York, held at the court-rooms thereof, in the city of New York, the 12th day of May, 1872.

Present: Hon. Sam'l Blatchford, J.

DEMAS BARNES, as Assignee, &c.,

vs.

THE ÆTNA LIFE INSURANCE COMPANY *et al.*

On reading and filing the consent of the solicitors for the respective parties, it is—

Ordered, That the receiver in this cause be, and he is hereby, authorized and directed, out of the funds in his hands, to pay to Messrs. Bangs & North, in full satisfaction of all their claims for professional services and disbursements for the said receiver up to the date of this order, the sum of one hundred and five dollars.

SAM'L BLATCHFORD.

Filed May 12, 1873.

24 The cause came on for final hearing before Hon. Addison Brown, U. S. district judge, on the 11th day of March, 1882.

Appearances: James K. Hill, Esq., for the complainant; Thomas M. Tyng, Esq., for all the defendants except Theodore J. Vetterlein individually, but does appear for him as trustee; Benj. E. Vetterlein, Esq., for Theodore J. Vetterlein individually; Matthew L. Harvey, Esq., for the petitioners, James A. Courtney and others.

The petitions of James A. Courtney and others and the answers thereto and the orders made thereon are not printed, because not necessary to the determination of this appeal.

The complainant read in evidence Exhibits 1 to 9, inclusive, as follows:

COMPLAINANT'S EXHIBIT 1.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Adjudication of Bankruptcy. (*Creditors' Petition.*)

In the District Court of the United States for the Southern District of New York. In Bankruptcy.

In the Matter of THEODORE H. VETTERLEIN and BERNHARD T. VETTERLEIN, Bankrupts. No. 2912.

At the city of New York, in said district, 7th day of February, A. D. 1871.

This cause came on to be heard at the city of New York, in said court, and it appearing that a petition herein was filed on the 28th day of December, 1870, upon which an order was made requiring Theodore H. Vetterlein and Bernhard T. Vetterlein to appear and show cause why they should not be adjudged bankrupts on the 7th day of January, 1871, at 11 o'clock a. m., and it appearing on said return day that said order and said petition had been duly served on the said Theodore H. Vetterlein and Bernhard T. Vetterlein, and the said Theodore H. Vetterlein and Bernhard T. Vetterlein having appeared, by their attorney and solicitor, John Langdon Ward, Esq., and denied the acts of bankruptcy alleged in said petition and demanded a trial by jury, whereupon the trial was adjourned till February 7th, 1871, on which last-mentioned day the said Theodore H. Vetterlein and Bernhard T. Vetterlein appeared, by their said attorney and solicitor, John Langdon Ward, Esq., and a jury was empanelled and sworn and the trial had, whereupon, after hearing the evidence adduced on behalf of the petitioning creditors, and the said Theodore H. Vetterlein and Bernhard T. Vetterlein declining to produce any testimony, and, after hearing counsel for petitioners and counsel for said Theodore H. Vetterlein and Bernhard T. Vetterlein, the jury, under the direction of the court, found a verdict in favor of the petitioning creditors, and, that the said Theodore H. Vetterlein and Bernhard T. Vetterlein committed the act of bankruptcy alleged in the said petition, and thereupon, and upon consideration of the proofs in said cause and the arguments of the said counsel therein and the verdict of the jury, it was found that the facts set forth in said petition were true, and it is, therefore, adjudged

26 that Theodore H. Vetterlein and Bernhard T. Vetterlein became bankrupts within the true intent and meaning of the Revised Statutes of the United States, title "Bankruptcy," before the filing of the said petition, and each of them are, therefore, declared and adjudged to be bankrupts accordingly.

And it is further ordered that the said bankrupt shall, within five days after the date of this order, make and deliver, or transmit by mail, post-paid, to the marshal, as messenger, a schedule of his creditors and an inventory of his estate in the form and verified in the manner required of the petitioning debtor by the said Revised Statutes.

And it is further ordered that the above-entitled case be referred to Henry Wilder Allen, Esq., one of the registers in bankruptcy of this court, to take such proceedings thereon as are required by the said Revised Statutes.

Witness the Honorable Samuel Blatchford, judge of the said court, and the seal thereof, at the city of New York, in said district, on the 7th day of February, A. D. 1871.

[Seal of the Court.]

GEO. F. BETTS,
Clerk of the District Court for said District.

S. C. W.
Enter S. B.

Endorsed: No. 2912. United States district court for the southern district of New York. In bankruptcy. In the matter of Theodore H. Vetterlein and Bernhard T. Vetterlein, bankrupts. Adjudication of bankruptcy. Creditors' petition. Filed Feb'y 7, 1871, at 10 o'clock *p.* m.

27 COMPLAINANT'S EXHIBIT 2.

Creditors' Petition.

To the Hon. Samuel Blatchford, judge of the district court of the United States for the southern district of New York:

The petitition of Lewis Fatman, Solomon J. Fatman, Morris Ranger, and Solomon Ranger, composing the firm of Fatman & Co., of the city of New York, in the county of New York and State of New York, respectfully shows that they are creditors of Theodore H. Vetterlein and Bernard T. Vetterlein, composing the firm of Th. H. Vetterlein & Sons, and also of Vetterlein & Co., who, for a period of six months next preceding the date of the filing this petition, carried on business at the city of New York, in the county of New York and State of New York, and district aforesaid, as merchants and traders.

That your petitioners' demand is provable against the said Theodore H. Vetterlein and Bernard T. Vetterlein, in accordance with the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

That the said Theodore H. Vetterlein and Bernard T. Vetterlein owe debts to an amount exceeding the sum of three hundred dollars; that your petitioners' demand exceeds the amount of two hundred and fifty dollars, and that the nature of your petitioners'

demand against the said Theodore H. Vetterlein and Bernard T. Vetterlein is as follows:

A certain promissory note, of which the following is a copy:

$2,343.84. NEW YORK, *May 24th*, 1870.

Six months after date we promise to pay to the order of ourselves two thousand three hundred and forty-three $\frac{84}{100}$ dollars, at 142 Pearl street. Value received.

TH. H. VETTERLEIN & SONS.

[Int. Rev. stamp, canc'l'd.]

Endorsed: Th. H. Vetterlein & Sons and Vetterlein & Co.

Another promissory note, of which the following is a copy:

$2,343.84. NEW YORK, *May 25th*, 1870.

Six months after date we promise to pay to the order of ourselves two thousand three hundred and forty-three $\frac{84}{100}$ dollars, at 142 Pearl street. Value received.

TH. H. VETTERLEIN & SONS.

[Int. Rev. stamp, canc'l'd.]

Endorsed: Th. H. Vetterlein & Sons and Vetterlein & Co.

28 That your petitioners also hold other promissory notes of the said Th. H. Vetterlein & Sons to the amount of $11,956.80; that the consideration for the said promissory notes was merchandise sold and delivered by your petitioners to the said Theodore H. Vetterlein and Bernard T. Vetterlein, who at the time of such sale were and still are merchants and traders engaged in the business of buying and selling merchandise, and that each of said promissory notes were made, endorsed, and delivered by the said Theodore H. Vetterlein and Bernard T. Vetterlein to your petitioners, at or about the dates thereof, in the regular and ordinary course of business and in connection with the said business of the said Theodore H. Vetterlein and Bernard T. Vetterlein.

And your petitioners further represent that within six calendar months next preceding the date of this petition, at the city of New York, in the county and State of New York, the said Theodore H. Vetterlein and Bernard T. Vetterlein, as partners as aforesaid, did commit an act of bankruptcy, within the meaning of said act, to wit: Being merchants and traders as hereinbefore stated, they, on the 27th and 28th days of November, 1870, respectively, stopped and suspended payment of the promissory notes hereinbefore set forth, said notes being commercial paper, and have not resumed payment of the same within a period of fourteen days.

And your petitioners further represent that the said Theodore H. Vetterlein and Bernard T. Vetterlein, as partners as aforesaid, within six calendar months next preceding the date of this petition, at the place aforesaid, did commit another act of bankruptcy. Being merchants and traders as hereinbefore stated, being indebted to your petitioners in the sum of $2,343.84 on one of the promissory notes hereinbefore set forth, and owing other debts then due and payable, they, on the said 27th day of November, 1870, fraudulently stopped payment.

That the said Theodore H. Vetterlein and Bernard T. Vetterlein had, on the said 27th day of November, 1870, a large amount of property and assets, consisting in part of cash, bills receivable, book accounts, and merchandise.

That the said property and assets nominally amounted to the sum of $270,000 and upwards, and the actual value thereof, including $3,000 and upwards in cash, was not less than $150,000, as your petitioners are informed by the said Theodore H. Vetterlein and Bernard T. Vetterlein, and verily believe.

That the said Theodore H. Vetterlein and Bernard T. Vetterlein on said day declined and refused and still decline and refuse to apply the said money and property or any of it to the payment of their indebtedness to your petitioners, but state and claim
29 that they are insolvent and bankrupt and are not able to pay your petitioners over fifty per cent. of their claims, and that they are not able to make even such payment except in instalments payable in six, twelve, eighteen, and twenty-four months, respectively.

That the said Theodore H. Vetterlein and Bernard T. Vetterlein have, since the said 27th day of November, 1870, ceased to carry on their business as heretofore conducted, and are using and appropriating the said assets and property to their own support and not to the payment of their debts, as your petitioners are informed and really believe.

Your petitioners further represent that the said Theodore H. Vetterlein and Bernard T. Vetterlein, within the period aforesaid and at the place aforesaid, being insolvent, did commit another act of bankruptcy within the true intent and meaning of the said act, to wit: That on or about the 1st day of November, 1870, and at divers times between the first day of October, 1870, and the 1st day of December, 1870, the said Theodore H. Vetterlein and Bernard T. Vetterlein made payments and transfers of money with intent to give a preference to one or more of their creditors and to defeat and delay the operation of the said act.

Wherefore you petitioners pray that *he*, the said Theodore H. Vetterlein and Bernard T. Vetterlein, may be declared bankrupts, and that a warrant may be issued to take possession of the estate; that the same may be distributed according to law, and that such further proceedings may be had thereon as the law in such cases prescribes.

FATMAN & CO.,
By SOLOMON RANGER, *Petitioner.*

JAMES K. HILL,
Attorney for Petitioner, 44 *Wall St., New York City.*

Oath to Foregoing Petition.

UNITED STATES OF AMERICA, } ss:
District of ——, }

I, Solomon Ranger, one of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition subscribed by me are true so far as the same are stated of my

own knowledge, and that those matters which are stated therein on information and belief are true according to the best of my knowledge, information, and belief.

SOLOMON RANGER, *Petitioner.*

Subscribed and sworn to before me this 28th day of December, A. D. 1880.

EDWARD L. OWEN,
U. S. Commissioner.

30 Endorsed: No. 2912. United States district court for the southern district of New York. In bankruptcy. In the matter of Theodore H. Vetterlein and Bernard T. Vetterlein, against whom a petition for adjudication of bankruptcy has been filed. Creditors' petition. Jas. K. Hill, attorney for petitioner, 44 Wall street. Filed in the office of the clerk of the district court for said district this 28th day of December, A. D. 1870, at 1 o'clock p. m.

Complainant's Exhibit 3 is the judgment record in the action brought by the United States against Theodore H., Theodore J., and Bernard T. Vetterlein, copartners under the firm name and title — T. H. Vetterlein & Sons, to recover $540,000 on value of merchandise imported by them during the months of October, November, and December, 1868. This action was commenced by filing *præcipe* and issuing *capias* July 28th, 1869, and the *capias* was duly returned by the marshal with his certificate of personal service on the defendants. On Sept. 16, 1869, Joseph Gutman, Esq., filed a notice of appearance for the defendants. On April 19th, 1872, Messrs. Webster & Craig were substituted in place of Joseph Gutman as attorneys for said defendants, and upon the same day filed a *cognovit* admitting judgment in the sum of $99,951.25. On the same day the plaintiff's costs were taxed and judgment entered against the defendants for the said sum of $99,951.25 and $60.21, the costs as taxed.

31 COMPLAINANT'S EXHIBIT No. 4.

(No. 45, manual, as approved.)

Deposition for Proof of Debt Without Security. (*By Creditor.*)

SOUTHERN DISTRICT OF NEW YORK, *ss:*

In the District Court of the United States for the Southern District of New York. In Bankruptcy.

In the Matter of THEODORE H. VETTERLEIN and BERNHARD T. VETTERLEIN, Bankrupts.

At New York, in the county of New York and State of New York, on the first day of April, A. D. 1878, before me, a United States commissioner in and for the southern district of New York, came Roger M. Sherman, of number 142 East 18th street, in the city of New York, in the county of New York and State of New York, assistant United States attorney, and made oath, and who, after being duly

sworn and examined at the time and place aforesaid, upon his oath aforesaid says that the said Theodore H. Vetterlein and Bernhard T. Vetterlein, the persons against whom a petition for adjudication of bankruptcy has been filed, at and before the filing of the said petition were and still are justly and truly indebted to the United States of America in the sum of ninety-nine thousand and nine hundred and fifty-one and $\frac{25}{100}$ dollars ($99,951.25) for the value of certain goods, wares, and merchandise theretofore imported by the said Theodore H. Vetterlein and Bernhard T. Vetterlein in violation of the provisions of section one of an act of Congress approved March 3, 1863, entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes," and forfeited thereby to the United States, and that no payment has been received on such indebtedness; for which said sum of ninety-nine thousand nine hundred and fifty-one dollars and twenty-five cents or any part thereof this deponent says that he has not, nor has the United States nor any person by his order, or to this deponent's knowledge or belief, for the use of the United States, had or received any manner of satisfaction or security whatever save and except a judgment therefor in the district court of the United States
32 for the southern district of New York, which was duly entered in favor of the United States and against said Theodore H. Vetterlein, Bernhard T. Vetterlein, and Theodore J. Vetterlein, defendants, on the 19th day of April, 1872, which judgment remains of record and wholly unsatisfied; and said attorney claims for said debt priority of payment out of the joint estate of the said bankrupts as prescribed by law.

And this deponent further says that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, or under any act amendatory thereof; that no bargain or agreement, express or implied, has been made or entered into by or in behalf of this deponent to sell, transfer, or dispose of said claim or any part thereof against said bankrupts, or to take or receive, directly or indirectly, any money, property, or consideration whatever whereby the vote of this deponent or of the United States for assignee or any action on the part of this deponent or any other person in the proceedings under said act has been, is, or shall be in any way affected, influenced, or controlled.

ROGER M. SHERMAN,
Ass't United States Attorney.

Subscribed and sworn to before me this first day of April, A. D. 1878, the proof of debt being satisfactory to me. Before me—

[L. S.] SUTHERLAND TENNEY,
Notary Public, N. Y. Co.

Endorsed: Docket —. Case No. —; page —. District court of the United States, southern district of New York. In bankruptcy. In the matter of Theodore H. Vetterlein and Bernhard T. Vetterlein,

bankrupts. Proof of debt without security (by creditor). Received and filed this — day of ——, A. D. 187–. —— ——, clerk of said district court U. S.

33 Complainant's exhibit 5 is a certified copy of all the papers in an action brought by Demas Barnes, as assignee in bankruptcy of the estate and effects of Theodore H. Vetterlein and Bernhard T. Vetterlein, against Theodore H. Vetterlein, Bernhard T. Vetterlein, Theodore J. Vetterlein, the Mutual Life Insurance Company, and the Mutual Benefit Life Insurance Company to obtain possession of two policies of insurance on the life of Wm. Mann, amounting in the aggregate to $10,000, and two policies of insurance on the life of Theodore H. Vetterlein, amounting in the aggregate to $10,000, which had, in July, 1870, been transferred by Theodore H. Vetterlein to Theodore J. Vetterlein and Bernard T. Vetterlein in trust for the benefit of the wife and children of the said Theodore H. Vetterlein. On August 8th, 1872, a final decree was entered by default without appearance or answer against the said defendants setting aside the above-described transfer of the said policies on the ground that the assignment and transfer of the policies were null and void as against the complainant in said action, and adjudging that the complainant, as assignee in bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein, was vested with the title to and entitled to recover the said policies, and further directing that the receiver appointed in the said action deliver the policies to the complainant, as assignee, &c.

34 "Complainant's Exhibit 6 is the judgment record in an equity action in the circuit court of the United States for the southern district of New York, in which Theodore J. Vetterlein, as sole surviving partner of the firms of Th. H. & B. Vetterlein & Co., Theodore H. Vetterlein & Sons, and Vetterlein & Co., is complainant and Demas Barnes, as assignee of Theodore H. Vetterlein and Bernhard T. Vetterlein, involuntary bankrupts, and Demas Barnes individually, is the defendant.

"The complainant in this action, in his amended bill of complaint, claimed, among other things, that on the 31st of December, 1869, the firm of Vetterlein & Co., of Philadelphia, composed of Theo. H. Vetterlein, Bernhard T. Vetterlein, and the complainant, was dissolved; that at the date of such dissolution there was due to the complainant as his share of the assets thereof the sum of

35 $25,000 & upwards, and that he had never received any part of such assets; that the said firm of Vetterlein & Co. was, on the 31st of December, 1869, perfectly solvent, and that it had no debts or obligations whatever, & that the defendant, Demas Barnes, under color of his title as assignee, had taken into his possession the funds resulting from the liquidation of the said solvent firm of Vetterlein & Co., and had collected large sums of money which were the assets of the said firm of Vetterlein & Co., amounting to some $16,000.00 and upwards, and specified among such assets so collected the sum of $2,058.29 collected from J. K. Taylor by the defendant.

"The complainant further alleged that he was the sole party entitled

to collect and administer the assets of the said firm of Vetterlein & Co., being the only remaining solvent partner therein, and sought as relief in said action, among other things, an injunction re-
36 straining the defendant from making further collections and judgment against the defendant in a certain sum, together with such further sum as might be found due on an accounting.

"It also appears from such record that the defendant, Demas Barnes, appeared in the action and filed his answer therein, alleging, among other things, that the complainant had no interest in the assets of the firm of Vetterlein & Co., from which he retired on December 31st, 1869.

"That evidence was taken in the action both on behalf of complainant and defendant, and after a final hearing, and on the 16th day of February, 1881, judgment was rendered in said action on the merits in favor of the defendant."

37 COMPLAINANT'S EXHIBIT 7.

An order of the U. S. district court in this action directing the payment of the proceeds of the policies mentioned in the pleadings into the United States Trust Company.

COMPLAINANT'S EXHIBIT 8.

United States Trust Company's certificate of deposit for $8,933.63.

COMPLAINANT'S EXHIBIT 9.

United States Trust Company's certificate of deposit for $1,860.64.

38 *Complainant's Evidence.*

Deposition of Theodore H. Vetterlein, duly taken in this cause and filed March 11, 1882.

Of this deposition pp. 14 to 17, 21, and 25 to 32, inclusive, were read in evidence on the final hearing in this cause on behalf of the complainant as follows:

Q. Did you and Bernhard T. Vetterlein, on the 22d day of December, 1870, make a general assignment at Philadelphia of all your property to Hagan and Rettew for the benefit of creditors?

(Objected to on the ground, 1st, that it is not the best evidence; 2d, that it is incompetent; 3d, that it is immaterial.)

A. I made it in Philadelphia.
Q. Did not Bernard T. Vetterlein execute it?
A. No, sir; he was not present when I made it.
Q. When did he sign it?
A. That I could not tell you, whether he signed it or did not sign it.
Q. Do you know whether he ever executed that assignment or not?
A. Well, I could not say positive whether he did or not.
Q. Did it embrace the property of the New York house?

(Objected to as calling for the contents of a written paper.)

A. Yes, sir.

Q. In the month of January, 1871, was there an inventory of all the property assigned to Hagan and Rettew taken?

A. Yes, sir.

Q. Did you see that inventory?

A. I saw the inventory which was made out in Philadelphia?

Q. Was it in print?

A. Yes, sir.

Q. (Showing witness paper.) Is that the inventory that was then taken?

(Objected to on the ground that if counsel wishes to prove the contents of any inventory he must produce the original or a certified copy thereof.)

A. That is a copy of the inventory.

(Same offered in evidence by complainant's counsel and marked Complainant's Exhibit 10.

39 COMPLAINANT'S EXHIBIT 10.

(*Title*) *Assigned Estate of Vetterlein & Co., Philadelphia, and Theo. H. Vetterlein & Sons, New York.*

Inventory and appraisement. Filed January 28, 1871.

CITY AND COUNTY OF PHILADELPHIA:

Personally came before me, J. W. Hampton, Jr., a notary public in and for said city and county, William Soby, Herman Schmidt, and J. F. Forrest, who, upon their solemn oaths, did say that they did well and truly and without prejudice or partiality value and appraise the real and personal property of the assigned estate of Vetterlein & Co., of Philadelphia, and in all respects performed their duty to the best of their skill and judgment.

WM. SOBY.
H. SCHMIDT.
J. F. FORREST.

Sworn and subscribed this 27th day of January, A. D. 1871.

[SEAL.] J. W. HAMPTON,
Notary Public.

Inventory and appraisement of the real and personal property of the assigned estate of Vetterlein & Co., of Philadelphia, taken and made in conformity with the above deposition:

Stock in store 111 Arch street.—Sundry items (not here enumerated) amounting to		$9,149 84
Book debts, good.—Sundry items (not here enumerated) amounting to	$15,822 00	
Bills receivable	742 95	
	$16,564 95	
Less 33⅓ per cent.=	5,521 65	
		11,043 30
		$20,193 14

40	Book debts, doubtful.—Sundry items (not here enumerated) amounting to	$29,309 99
	Book debts, bad.—T. G. Kerony	717 58
	* * * * *	
	J. K. Taylor	51,560 14
	* * * * *	
		$157,409 05
	Furniture.—Sundry items (not here enumerated) amounting to	$450 00
	Each defendant claims the exemption as to the above.	
	Mortgages, stocks, &c.—Sundry items (not here enumerated) amounting to	23,223 14
	Real estate.—Sundry items (not here enumerated) amounting to	24,497 00
		$47,720 14

PHILADELPHIA, *January* 9, 1871.

GENTLEMEN: We take the liberty of requesting you to act as appraisers to value and estimate the assets of Th. H. Vetterlein & Sons, consisting of merchandise, stocks, debts due the said firm, and send us, at as early a date as you may find convenient, a statement signed by you and acknowledged before a commissioner of the State of Pennsylvania. The basis to be cash at public sale.

Respectfully,

T. M. RETTEW,
ARTHUR HAGAN,
Assignees,
Per N. C. ELLIS, *Attorney.*

Messrs. A. Strohn, H. Thierman, New York.

Assets of Th. H. Vetterlein & Sons.

Good.

Cash		$201 50
Bills receivable.—Sundry items (not here enumerated) amounting to	$11,239 75	
Less 20 per cent.	2,247 95	8,991 80
Doubtful bills receivable.—Sundry items (not here enumerated) amounting to	$17,177 71	
Less 70 per cent.	12,024 40	5,153 31
		$14,145 11

Bad stock.—2 cases tobacco in Buffalo	$63 00	
Bills receivable.—Sundry items (not here enumerated) amounting to	30,512 98	
	$30,575 98	
Less 95 per cent.	29,047 18	
		1,528 80
		$15,673 91

41 The above inventory having been submitted to us, we, in accordance with the appointment hereto attached, have valued and appraised the assets of Th. H. Vetterlein & Sons, to the best of our knowledge and belief, as above.

Dated New York, January 17, 1871.

H. THIERMAN.
ADOLPH STROHN.

(Duly acknowledged January 18, 1871, at the city of New York, before Edwin F. Corey, Jr., a commissioner for Pennsylvania in New York.)

I, James H. Winchester, formerly and for many years a master in the mercantile service, and from long experience competent to estimate and value steamships, did, on this twelfth day of January, 1871, at the request and in accordance with the document hereto annexed, examine the steamship Prometheus and find, according to the best of my knowledge and belief, that she, the said steamship, is worth and would only realize, if sold at this time, twelve thousand dollars U. S. currency.

Dated New York, January 13, 1871.

JAMES H. WINCHESTER.

(Duly acknowledged January 14, 1871, at the city of New York, before Edwin E. Corey, Jr., a commissioner for Pennsylvania in New York.)

PHILADELPHIA, *January* 9, 1871.

GENTLEMEN: We take the liberty of requesting you to act as appraiser, to value and estimate the interest of Th. H. Vetterlein & Sons and Vetterlein & Co. in the steamship Prometheus now lying in the Atlantic dock, Brooklyn, and return your finding to us, signed by you and acknowledged before a commissioner for the State of Pennsylvania, at as early date as you can find convenient, the basis of the valuation to be what the steamer would bring at auction cash.

Respectfully,

T. M. RETTEW,
ARTHUR HAGAN,
Assignees.

Messrs. James H. Winchester, A. Strohn.

NEW YORK, *January* 13, 1871.

Messrs. Vetterlein & Sons, city.

GENTS: I was hunting on the docks, Brooklyn side, after the Prometheus since half past eight, till I found out in the Atlantic Dock Company's office that she laid out last night and crossed the gap. By examining the steamships Fah-kee, Santee, and Granada, I found out that I cannot be a judge on steamboats, as I could not form any idea about value, and would not make an affidavit of matters which I do not understand.

Yours, A. STROHN.

42 I, the undersigned, a member of the firm of Th. H. Vetterlein & Sons, on a careful examination of the books of the said firm, find that for expenditure account of the S. S. Prometheus the said firm has valid claim on the said steamship of eleven hundred and fifty-five dollars and five cents ($1,155.05); that the said steamship is valued, as per appraisement hereto attached, at $12,000; that there is a claim in favor of Souder & Adams, Philadelphia, for $1,800 00
To which add as above 1,155 05
Account insurance 1,200 00
Secor. bill 117 50
Wharfage 132 50

$4,405 05

Deducting which leaves a nett value of $7,594 95
That the interest of Th. H. Vetterlein & Sons is $\frac{7}{16}$ and $\frac{1}{16}$, amounting to 1,170 89
That of Vetterlein & Co. is $\frac{1}{4}$, amounting to 1,898 74

$3,069 63

Dated New York, January 13, 1871.

BERNARD T. VETTERLEIN.

(Duly acknowledged January 14, 1871, at the city of New York, before Edwin F. Corey, Jr., a commissioner for Pennsylvania in New York.)

43 Q. Did you or either of your firms, on the 22d day of December, 1870, have any property that was not embraced in this inventory?

A. No, sir.

Q. Then this inventory embraces all the property assigned by you to Hagan & Rettew?

A. Yes, sir.

Q. Were there any accounts on the books of either firm that you knew of that were good and collectible or even doubtful that were not embraced in this inventory?

A. No, sir.

Q. Do you recollect at what amount the assets of the New York house were appraised here?

A. No, sir; not unless I refer to the copy there.

Q. Can you, by referring to the copy, refresh your recollection as to the amount?

A. If I look at it I can see what the amount was.

Q. Look at it for the purpose of refreshing your recollection, and state the amount of good assets at the time that inventory was taken.

A. Which assets do you mean?

Q. First state the assets of the New York house.

A. That I could not tell, because I did not manage that business.

Q. See if, after examining this inventory and refreshing your memory, you can state the assets of the Philadelphia house.

A. I think the assets were correct as stated here.

Q. Was the amount of the bills receivable and book accounts of the Philadelphia house inventoried at $15,673.91?

(Objected to on the ground that the question does not call for the recollection of the witness, but merely asks him to state or read from a printed paper which is handed to him.)

Mr. HILL: Turn to the last page, please.

A. I think they are correct.

Q. (Question repeated.) Do you mean to say you think that is correct?

A. I think they were correct, and it was taken from the bills receivable.

Q. Where does the stock of the Philadelphia house appear on this inventory?

44 A. You will find it in here, in the book.

Q. On what page?

A. The book explains itself. It is on the first page.

Q. What was the amount of stock in Philadelphia?

A. According to the book, nine or ten thousand dollars.

Q. And what were the bills receivable and book accounts of the New York house?

A. That is explained in the inventory book here.

Q. Can you tell me from that the amount?

A. I cannot, except by adding it up.

Q. Did you, at or about the time you assigned these J. K. Taylor policies to Bernhard T. Vetterlein and Theodore J. Vetterlein, assign any other policies to them?

(Objected to as incompetent and as not a proper subject for cross-examination.)

A. Yes, sir.

Q. What other policies did you so assign?

A. My own, for $10,000, which I had insured on my own life, and two policies which I had received from W. B. Mann.

Q. For what amount—do you recollect?

A. $10,000 each, amounting, together, to $20,000.

Q. How long had you had this policy on your own life which you o assigned?

A. About, probably, five or six years.
Q. Were all these policies assigned at the one time?
A. Yes, sir.
Q. And a part of the same transaction?
A. They were all transferred at the same time.
Q. Was the reason for transferring them all one and the same?

(Objected to as incompetent.)

A. Yes, sir; the same reason.
Q. Can you give any other reason for assigning any of these policies except the one you gave on your direct examination to-day?
A. No other reason except that.

(Pp. 25 to 32, inc.)

Q. At the time J. Kinzey Taylor assigned these policies to you in about what amount was he indebted to you or your firm?
A. The first policy amounted to $50,000, and that was about covering what he owed the firm.
Q. Is there an account with Taylor in the ledger of Vetterlein & Co.?
A. I suppose so.
Q. (Folio 433 of ledger 7 shown witness.) Is that the account?
A. That is the account.

45 (Complainant offers in evidence folio 433 of ledger, being account of J. Kinzey Taylor from May 12, 1869, to July 27, 1870, showing a balance to the debit of J. K. Taylor of $11,560.14, with the account standing open as follows:

EXHIBIT 11. March 18, '82. Ledger 7, p. 433. J. K. Taylor.

DR.				CR.			
1870.							
Jan'y 1	To balance		$7,709 32				
" 7	" cash	158	2,520 00				
March 18	" ditto	164	1,250 00				
July 13	" ditto life insurance	167	60 89				
" 27	" ditto do.	167	19 93				

Q. As a matter of fact, did Vetterlein & Co., on the 6th day of July, write off to profit and loss $40,000 of this account?
A. Yes, sir.
Q. Still leaving the account as it stands on the ledger?
A. Yes, sir.
Q. At what time did J. Kinzey Taylor fail—do you know?
A. That book will show you; in 1868 or 1869.
Q. Were these policies assigned to you by Taylor for the purpose of securing his indebtedness to Vetterlein & Co.?
A. Yes, sir.
Q. For any other purpose?
A. No, sir.

Q. Did the firm of Vetterlein & Co. pay the premiums on these policies after the assignment?

A. We furnished the money and loaned him the money to do it.

Q. Is it charged to him in this account?

A. No; it is not exactly charged here, but we loaned him money. (Witness examines book.) Do you mean the large notes? This is only the premium when I had the policies condensed. The firm paid the premiums after the policies were condensed.

Q. Down to the time of the bankruptcy?

A. Yes, and even after. The assignee owes now that money for two years and never paid it. I paid the policies. I have got the receipts for these two.

Q. Did Vetterlein & Co. pay up to the time of your bankruptcy the premiums on these policies?

(Objected to on the ground that witness has stated that he personally paid them.)

46 A. I stated that first we, Vetterlein & Co., paid the small premiums upon notes which were due from the old policies which were condensed.

Q. And that after the bankruptcy you paid them; do you mean that?

A. For 1871 and 1872.

Q. To hom did wyou pay the premiums?

A. To the company.

Q. Did you do it personally?

A. No.

Q. Through whom?

A. Through some of my sons—Julius Vetterlein & Co. They paid it.

Q. For you?

A. Yes, sir; for me.

Q. What premiums did Julius Vetterlein pay for you on the condensed policies?

A. I could not state the amount unless Mr. Barnes will refer to the statement made to him by Julius Vetterlein & Co.

Q. Did Julius Vetterlein & Co. make a statement to Mr. Barnes for these premiums?

A. Made it out several times and sent it to Mr. Barnes.

Q. To try to collect it from him?

A. To try to collect it from him.

Q. Was that statement of these premiums paid by Julius Vetterlein for you sent to Mr. Barnes at your request?

A. No, sir; at their own request.

Q. Did Mr. Barnes claim that you were owing him something on the sale of a steamer?

A. So he has; I didn't get it; Julius Vetterlein & Co. got it.

Q. And Julius Vetterlein & Co. got the money on the steamer and paid the premiums on these policies?

A. Yes, sir.

Q. What amount of money did they get on the steamer?

A. I couldn't tell exactly; I think about $650, or thereabouts.
Q. And what amount of money did they pay for these premiums?
A. The premiums on policies which Barnes received, about $900, including mine and Taylor's.
47 Q. What amount per year after the policies were condensed was paid as premiums on the Taylor policies?
A. What the books state and what Julius Vetterlein & Co. state.
Q. The book states $63.75 one year and $60.89 another year; is that correct?
A. I believe so.
Q. Look at the entry on page 129 of the journal, under date of August 24, 1869, and state if that is an entry of that payment.
A. That was, no doubt, and the entry made by the book-keeper; I didn't make it.

(Entry offered in evidence by complainant and read as follows:)

"AUGUST 24.

"Sundries, Dr.

"To cash, J. K. Taylor, life insurance---------- $63 75
"Ledger, page 433."

Q. Look at the entries on page 167 of the journal, under date of July 13 and July 27, and see if these are entries relating to the payment of these premiums.
A. They are.

(Complainant's counsel reads the entries in evidence as follows:)

"JULY 13, 1870.

"Sundries, Dr.

"To cash, J. K. Taylor, life insurance---------- $60 89
"Ledger, page 433."

"Sundries, Dr.

"To cash, J. K. Taylor, life insurance---------- $19 93
"Ledger, page 433." (Page 167 of ledger.)

Q. Those were paid by Vetterlein & Co.?
A. Yes, sir.
Q. Was J. Kinsey Taylor's account in ledger No. 7 carried forward to any other ledger?

Objected to as incompetent and not the best evidence.

A. You will have to refer to the books.
Q. I have turned to them to save you the time.
A. (After examining book.) It was.
Q. On page 400 of ledger No. 1?
A. Yes, sir.
Q. Under date of December 21, 1870?
A. Yes, sir.

48 Complainant's counsel reads same in evidence as follows:

"1870, DECEMBER 21.

"J. K. Taylor, Dr.

"To balance $11,560 14

"Journal, p. 208."

Q. Is that the journal entry?

A. I believe so.

Complainant's counsel reads in evidence entry under date of December 21, 1870:

"Dr.

"To sundries, J. K. Taylor $11,560 14

"From old ledger No. 3."

Q. Is ledger No. 1 from which I have just read the entries the last ledger kept by the Philadelphia house?

A. Yes, sir.

Q. Is there any later than that?

A. No.

Q. There was none later?

A. No, sir.

Q. That was the ledger in use at the time the bankruptcy proceedings were commenced?

A. Yes, sir.

Q. Did that last firm of Vetterlein & Co., in Philadelphia, take the assets of the preceding firm of the same name?

A. Take the assets of the preceding firm?

Q. Did they pass from one firm to another?

A. Part of it may have been taken in; I don't know whether they were all taken in.

Q. The J. K. Taylor claim was taken in, was it not, from that ledger?

A. Yes, sir.

49 *Deposition of John A. Sharp. Filed January 26th, 1882. Pages 1, 2, and 3.*

JOHN A. SHARP, a witness on behalf of the complainant, being duly sworn, testified as follows:

1 Q. What is your business?

A. Book-keeper for Demas Barnes.

2 Q. And you have been with Demas Barnes, the assignee and complainant in this action, for what length of time?

A. Going on nine (9) years.

3 Q. Have you had charge of the books of the bankrupts during that period?

A. I had.

4 Q. When did you first take charge of those books?

A. In the month of June, 1871.

5 Q. Do you recollect now at what time Mr. Barnes was appointed assignee?

A. I do not; I believe it was in January, 1871—January or February—I am not positive which.

6 Q. Then you took charge of those books shortly after his appointment?

A. Yes.

7 Q. What amount of debts, Mr. Sharp, have been proved against the bankrupts?

A. Well, the correct amount, as proved, stands to-day $351,098.96.

8 Q. Does that include the Government claim of $100,011.46?

A. Yes.

9 Q. Is that amount exclusive of disputed claims or not?

A. That takes in all disputed and otherwise.

10 Q. Do you know whether, from their books, there are any claims that have not been proved or not?

A. I found, in going over their books at an earlier date, that there were some amounts that appeared to be credited to parties that had not been proved; how much I cannot say.

11 Q. What amount has been actually realized by the assignee from the assets of these bankrupts?

A. $112,957.44.

50 12 Q. Then, if I understand you, the debts of the bankrupts exceeded the amount realized from their assets about $240,000; is that so?

A. $238,100.

13 Q. Are there any assets, to your knowledge, that have not been collected that are collectible?

A. There is nothing, to my knowledge, that is collectible excepting the matters that are now in litigation in the hands of our attorney.

14 Q. The claim in this suit against the Ætna Life Insurance Company being the largest asset?

A. The J. Taylor life fund is the largest asset still uncollected that is probably collectible.

Complainant rests.

51 *Defendants' Evidence.*

Testimony of Bernhard T. Vetterlein. Filed January 26, 1882. Questions 1 to 18, 23–31, and 38.

1 Q. You are one of the defendants in this action?

A. Yes.

2 Q. How are you related to Theodore H. Vetterlein and Theodore J. Vetterlein?

A. Son of Theodore H. Vetterlein and younger brother of Theodore J. Vetterlein.

3 Q. When was the firm of Theodore H. Vetterlein & Sons first formed?

A. May 1st, 1865.

4 Q. Were there any written articles of copartnership that you know of?

A. No.

5 Q. Who composed that firm when first formed?

A. Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernhard T. Vetterlein.

6 Q. How long did that firm continue in existence?

A. January 1, 1867, or December, 1866.

7 Q. What change then took place?

A. Theodore J. Vetterlein withdrew, by consent, from the firm.

8 Q. Did the firm name continue the same after his withdrawal?

A. It did.

9 Q. Was there any other change in that firm up to the time the members thereof were adjudicated bankrupts?

A. None; no change.

10 Q. Did that firm ever have any business transactions with J. Kinsey Taylor?

A. None that I can remember; I can't tell without seeing the ledger of that firm.

11 Q. Will the ledger of Theodore H. Vetterlein & Sons show the transactions, if there were any, with J. Kinsey Taylor?

A. The ledger will show if there were any?

12 Q. Did you know J. Kinsey Taylor?

A. I did.

13 Q. When did you first become acquainted with him?

A. In 1864 or 1865.

14 Q. Where did he then reside?

A. In Philadelphia.

15 Q. In what business was he engaged?

A. Jobber in manufactured tobacco.

16 Q. When was the firm of Vetterlein & Co. first formed?

A. Some time in the forties.

17 Q. Were you ever a member of that firm; and, if so, when did you become such?

A. I think some time in 1864; the Philadelphia "Ledger" will show.

52 18 Q. Who composed that firm at the time you first became a member of it?

A. Theodore H. Vetterlein, Charles A. Meurer, and Theodore J. Vetterlein.

19 Q. Were there any written articles of copartnership between the members of that firm?

A. No.

20 Q. When did Theodore J. Vetterlein first become a member of that firm?

A. In '62 or '63.

21 Q. Is there any way you can fix the exact date; and, if so, what?

A. By the ledger of Vetterlein and Co. of either 1862 or '63.

22 Q. What entries in the ledger will show the dates at which you and Theodore J. Vetterlein, respectively, became members of that firm?

A. You will have to compare three entries to get at that. The

private account of Theodore H. Vatterlein and the account of Theodore J. Vetterlein and the profit and loss account will show when he went in, and my account in connection with the others will show when I went in.

23 Q. When did Theodore J. retire from that firm?

A. In 1869.

24 Q. Can you fix the exact date at which he retired?

A. I can fix it.

25 Q. From what?

A. I can get it from my private letters.

26 Q. When did Mr. Meurer retire from that firm, if ever?

A. July 1st, 1869, I think; I can ascertain.

27 Q. Were there any changes in the firm of Vetterlein & Co., from the time you became a member of it until the adjudication in bankruptcy, except the withdrawal of Theodore J. Vetterlein and Mr. Meurer?

A. No change at all.

28 Q. Was there any accounting between the members of Vetterlein & Co. at the time Mr. Meurer retired?

A. Yes.

29 Q. In what shape was that accounting?

A. Stock account taken; general closing of the books.

30 Q. Did he on his retirement withdraw anything from the firm?

A. Directly, not.

31 Q. Was there any accounting between the members of Vetterlein & Co. at the time Theodore J. Vetterlein retired from the firm?

A. No; not beyond ascertaining the balance that was due him.

32 Q. Did Theodore J. Vetterlein withdraw anything from the firm at the time of his retirement?

A. Not that I know of.

53 33 Q. Did you ever contribute anything towards the capital of Vetterlein & Co. at the time you became a member of it?

A. Something—how much I don't know; I could tell by the ledger of Vetterlein & Co.

34 Q. Do you know whether Theodore J. Vetterlein, at the time he became a member of the firm, contributed anything towards the capital?

A. Yes; I know that he did.

35 Q. Will the ledger of Vetterlein & Co. show the amount?

A. Yes.

36 Q. Do you know when the firm of Vetterlein & Co. first commenced to have transactions with J. Kinsey Taylor?

A. I don't know exactly; I can't fix the date.

37 Q. Can you state the year?

A. Not with any certainty.

38 Q. What was the nature of the transactions between J. Kinsey Taylor and Vetterlein & Co.?

A. Sold him tobacco and various things; loaned him money.

B. T. VETTERLEIN.

Deposition filed Nov. 15th, 1872.

54 The said THEODORE J. VETTERLEIN, being of lawful age, and then and there produced and carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes as follows, to wit:

1st question by Mr. BALDWIN, counsel for defendant: State your name, age, residence, and occupation.

Answer. My name is Theodore J. Vetterlein; I am thirty-three years old; I reside in the city of Chicago, in the State of Illinois; I am not in any occupation at present.

2nd question by same. What connection, if any, did you have, during its existence, with the firm of Vetterlein & Company, of Philadelphia?

Answer. I was partner in said firm.

3d question by same. Who composed said firm of "Vetterlein & Co.," of Philadelphia, Pennsylvania, prior to 1865?

Answer. Theodore H. Vetterlein, Charles A. Meurer, and Theodore J. Vetterlein.

4th question by same. At what time did said Meurer leave said firm?

Answer. July 1st, 1869.

5th question by same. Who composed said firm after said Meurer left it?

Answer. Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernard T. Vetterlein. The latter came in on the 1st day of January, 1865.

6th question by same. To what date did you remain a member of said firm?

Answer. To the 31st day of December, 1869.

7th question by same. What was the financial standing and condition of Vetterlein & Co. December 31st, 1869, when you left said firm?

Answer. It was solvent.

8th question by same. What interest, if any, did you have in said firm at the time you left; what amount; what were the interests of the others?

Answer. Fifteen per cent. ($\frac{15}{100}$); the interest of Charles A. Meurer was twenty per cent. ($\frac{20}{100}$), B. T. Vetterlein's was fifteen per cent. ($\frac{15}{100}$), and Theodore H. Vetterlein's was fifty per cent. ($\frac{50}{100}$).

9th question by same. When did you first become connected with the firm of Vetterlein & Co.?

Answer. In October, 1857, I became connected with said firm as clerk, salesman, and buyer. In August, 1859, I went to Florida for the purpose of speculating in tobacco for account of myself and my brother, B. T. Vetterlein, still retaining my said connection with the firm. On the first of January, 1863, I first became a partner in the firm of Vetterlein & Company.

55 10th question by same. How much capital, if any, did you put into the firm at the time of becoming a partner?

Answer. I think I then had in said firm from three to five thousand dollars.

11th question by same. How did you acquire that capital?

Answer. In savings and in different speculations.

12th question by same. When you first became a member of the firm what amount of interest did you have?

Answer. One-sixth, or $16\frac{2}{3}$.

13th question by same. In November, 1866, about how much capital had you in the firm of Vetterlein & Co.?

Answer. About eighteen thousand dollars, not reckoning the doubtful debts—that is, over and above the doubtful debts due the firm.

14th question by same. How long did you continue to receive one-sixth of the profits of the firm?

Answer. Until the 1st of January, 1865.

15th question by same. After January 1st, 1865, what was the amount of your interest and how long did such interest continue?

Answer. Fifteen per cent. ($\frac{15}{100}$), which continued until the 31st of December, 1869.

16th question by same. What was the financial condition of Vetterlein & Co. in November, 1866; about how much was the concern worth at that time?

Answer. It was in good credit, and was worth $300,000.00.

17th question by same. What connection, if any, have you had with the firms of "Th. H. & B. Vetterlein & Co." and Th. H. Vetterlein & Sons, of New York city; when did such connection commence, and how long did it continue, and what was the nature of your connection with such firms? State the events in the order of time.

Answer. About the 1st of September, 1858, I made a trip to Florida for the purpose of receiving and shipping tobacco. I made this trip for Th. H. & B. Vetterlein & Co. This employment continued until January 1st, 1859. In August, 1859, I again went to Florida to buy tobacco for myself and brother. The house of Th. H. & B. Vetterlein & Co. advanced the money and charged interest and commissions. In 1860—about August or September—I went to Florida again and bought tobacco on joint account with Th. H. & B. Vetterlein & Co. After that there was nothing with said firm until June, 1862. Then (in June, 1862) I went to Ohio and bought Ohio tobacco for the same firm. In July, 1862, I went to Cairo, Illinois, for the purpose of transmitting money to Jackson, Tennessee, and to ship cotton to New York. I stayed there until the middle of September, 1862. Then I went to Memphis, Tennessee, and bought cotton until January 1st, 1863, in which latter
56 adventure I had an interest of one-third, after which I returned home. About the beginning of March, 1863, I started out West, through Ohio, Missouri, Louisville, and other places, to buy tobacco wherever I could find it for Th. H. & B. Vetterlein & Co., in which employment I continued until the 1st of May, 1865. On the first of January, 1863, I became a partner in the said firm of Th. H. & B. Vetterlein & Co., of New York city, and remained a partner in said firm until May 1st, 1865. My interest in said firm was one-sixth of Th. H. Vetterlein's interest in said firm. During this time when I was a partner the other parties were Bernard Vet-

terlein, an uncle; Theodore H. Vetterlein, my father, and Henry Theirmann. The dissolution of the house of Th. H. & B. Vetterlein & Co. took place May 1st, 1865. On that dissolution a new firm was formed—"Th. H. Vetterlein & Sons"—composed of Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernard T. Vetterlein. This last firm continued until December 31st, 1869, at which date I withdrew. That ended my connection with that house.

18th question by same. How much capital, as nearly as you can estimate it, did you have in the firm of Th. H. Vetterlein & Sons at its commencement, May 1st, 1865?

Answer. About twenty thousand dollars.

19th question by same. What was the financial condition of this last firm in November, 1866? About how much was it worth?

Answer. It was solvent and was worth about $180,000.

20th question by same. What was the financial condition of this last firm at the time you left it, December 31st, 1869? About how much was it worth at that time?

Answer. It was solvent. At that time it was worth, I should judge, about $200,000.

21st question by same. State whether the firms of "Vetterlein & Co.," of Philadelphia, and "Th. H. Vetterlein & Sons," of New York, continued in business after the date of your withdrawal from said firms, respectively; and, if yea, under what names, and how long.

Answer. They continued in business after my withdrawal under the same names up to the time of the "bankruptcy proceedings" in this case. After my withdrawal the remaining partners in each house continued the same, and were the same in both houses, viz., Theodore H. Vetterlein and Bernard T. Vetterlein.

22d question by same. How did you acquire the capital you had in the house of Th. H. Vetterlein & Sons in May, 1865?

Answer. Through the partnership interest I had in the house of Th. H. & B. Vetterlein & Co., in New York city, and also from some outside ventures I had in joint account with them in cotton and tobacco.

57 23d question by same. State whether you have had final settlement with said firms, "Vetterlein & Co." and "Th. H. Vetterlein & Sons," since withdrawing from said firms, respectively, and whether or not the capital you had in each at the time of such withdrawal has been paid over to you.

Answer. I have never had any final settlement with said firms. My said capital has not been paid over to me, except so far as necessary for my living. I could not state the amount; I suppose about two thousand dollars a year.

24th question by same. State whether or not you have received anything from said firms, or either of them or either of the members of said firms, in the way of security for the sums left by you, as you have before stated, with said firms at the time of your withdrawal; if yea, state what you have received.

Answer. I have received nothing by way of security for said sums excepting three life insurance policies amounting to $30,000, one of which only has been paid by the insurance companies into the

hands of a referee, which is awaiting the decision of the court. The said policy was for ten thousand dollars ($10,000) on the life of J. Kinsley Taylor, and the money was paid by order of Judge Blatchford into the hands of the referee. The other parties are still living—that is, the parties whose lives are insured.

25th question by same. About what sums do the firms last named now owe you?

Answer. Without deducting the said policy, they owe me $30,000.

26th question by same. State whether or not you have at any time purchased real estate in Miamisburg, Montgomery county, Ohio, for yourself or for either of said firms, and how many parcels, if any, and for whom in each case and when.

Answer. I have bought two parcels in Miamisburg, Ohio; the first parcel for the firm of Th. H. & B. Vetterlein & Co. in 1864, a lot 125 feet front by 89 feet deep, I think, with an old frame house on it, for $600, which was sold in 1868, or it might have been in 1867, for nine hundred and odd dollars; also a parcel purchased in November, 1866, for $4,300, a lot, perhaps, 150 feet front by 90 feet deep, with a brick building on it 35 by 75 feet, and a frame dwelling one and half stories high also on it, which last lot I bought for myself, and it remains unsold.

27th question by same. From whom was this last lot purchased and to whom was the deed made?

Answer. The deed came from Bertha A. Deckert and George L. Deckert, her husband, to myself, Theodore J. Vetterlein.

28th question by same. Was said purchase for all cash or for part cash and part credit; and, if for the latter, how much cash and how much credit?

Answer. It was for twenty-five hundred dollars cash and $900 payable in one year and $900 in two years, all being six per cent. interest.

58 29th question by same. Were these deferred payments secured; and, if so, how?

Answer. They were secured by a mortgage and notes executed by myself, Theodore J. Vetterlein, November 7th, 1866.

30th question by same. State whether or not said mortgage was recorded; and, if yea, in what book and page.

Answer. It was recorded in Book B No. 6, pages 96 and 97, on the 11th of December, 1866, Montgomery county records.

31st question by same. State whether or not those notes have been paid; and, if so, by whom.

Answer. Yes; they have been paid by Th. H. Vetterlein & Sons for my account.

32d question by same. State from whom you obtained your cash to make your cash payment on said property.

Answer. From the same parties.

33d question by same. State whether or not Vetterlein & Co., or Th. H. Vetterlein & Sons, or Theodore H. Vetterlein, or Bernard T. Vetterlein ever had any interest; and, if yea, what interest, in said last-mentioned lot.

Answer. None whatever—neither of them.

34th question by same. How long after the purchase of this last-mentioned lot did you remain in Miamisburg?

Answer. Between two and three days.

35th question by same. In whose charge did you leave the property when you left?

Answer. In the charge of Z. Umbenhauer.

36th question by same. What instructions, if any, did you give him as to communications with reference to said property and the care of the same?

Answer. I told him I would leave instructions with the house in New York, and if he wanted further instructions to communicate with them.

37th question by same. State whether or not you informed your partners in said two firms that you had purchased said property on your own account. And, if yea, when did you so inform them?

Answer. I must either have written to them or informed them personally on my return to New York. I do not now recollect which.

38th question by same. Where did you go from Miamisburg, and how long did you stay away from there after this purchase?

Answer. From Miamisburg I went to New York. I stayed there three or four days and then went to Florida. I stayed there a month and then went to New Orleans and then to Havana, and arrived in New York about the latter part of February, and a few days afterwards I went to Miamisburg.

39th question by same. How much of your time have you lived in Miamisburg since the purchase of that property?

Answer. Every year about two or three months off and on altogether, sometimes stopping a day or two and sometimes a week or two at a visit.

59 40th question by same. Where is the deed to you from Bertha A. Deckert and husband for this last-named lot in Miamisburg.

Answer. I think it is in the hands of William A. Boyd, in New York, who may be found at No. 6 Cedar street, New York. It went into his hands to make out another deed in case of the sale of the property, the amount of which was to be applied to the settlement with creditors of the estates of Theodore H. Vetterlein & B. T. Vetterlein in case such a settlement should be made.

60 *Deposition of Bernhard T. Vetterlein, Taken Before Henry Wilder Allen, Esq. Filed March 2, 1882.*

Of this deposition questions and answers Nos. 1 to 6, 10 to 17, 28 to 31, 35 to 49, 53 and 54, 62 and 63, 69 to 73, 95 to 97, inclusive, were read on the final hearing of this cause on behalf of the defendants, as follows:

BERNHARD T. VETTERLEIN, being first duly sworn as a witness on behalf of the defendants, testified as follows:

By Mr. TYNG:

I am one of the defendants.

1 Q. Do you know of the two papers which are annexed to the answer in this cause?

A. I know of the papers annexed to the answers in this cause, the papers signed by a number of the creditors of the firm of Vetterlein & Company on or about the 24th day of May, 1870.

2 Q. Do you know where the original of that paper is?

A. I do not.

3 Q. Do you know whether a paper or papers such as are annexed to the answers herein were signed by the creditors therein mentioned?

(Objected to on the ground that it is incompetent and immaterial. Sustained. Exception.)

A. I do; they were signed, as they appear attached to the answers in the case, by the parties whose signatures are on that paper or papers.

4 Q. Was such a meeting of creditors held and such committee appointed and such action taken as appears by those papers?

(Objected to on the same ground and as leading. Sustained. Exception.)

A. There was.

5 Q. State how the policies of insurance referred to in the pleadings came to be assigned to you and Theo. J. Vetterlein as trustees?

(Objected to as incompetent. Allowed.)

A. Theo. J. Vetterlein, who at that time was over sixty years of age, spoke to me about insuring his own life for the sum of twenty thousand dollars, in addition to that which was already on his life. I represented to him that on account of his age the yearly premium would be very large; that it was a matter to be considered. I then suggested to him that, in place of insuring his own life, it would be better to transfer to me in trust certain policies on the life of J. Kinsey Taylor and on the life of William B. Mann for the benefit of his wife and children. He delivered the policies to me with directions to prepare the assignments. I received the policies and endorsed the envelopes in which they were, and placed them in a tin

box which I had and deposited them in the safe in the Phila-
61 delphia office. They remained in my possession from that time up to the time they were forcibly taken from me upon an application made by the complainant and an order of the court. Taylor at that time was thirty-two years of age. The policies transferred amounted to $50,000. I had them reduced to a fraction over $10,000, for the reason that there would be no further payments required to be made. I did the same with the Mann policies; I reduced them so as to save expense.

6 Q. State about the time these policies were delivered to you as you have stated.

(Objected to as incompetent and immaterial. Allowed.)

A. In the year 1869.

Cross-examined by Mr. HILL:

10 Q. Is the defendant, Theodore H. Vetterlein, your father, and the defendant, Theodore J. Vetterlein, your brother?

A. Yes.

11 Q. Were the policies to which you have referred in your direct examination originally issued to J. Kinsey Taylor on his life and by him assigned to Theodore H. Vetterlein?

A. Yes.

12 Q. Were they so assigned to secure an indebtedness of J. Kinsey Taylor to the firm of Vetterlein & Co., of Philadelphia?

A. Partially to secure a debt due to the second firm of Vetterlein & Co., but in addition to another security, which was better, and covered the amount of the claim due by Taylor to the first firm of Vetterlein & Co.

13 Q. What was the character of this further security?

A. A judgment note for $50,000 and a bond and mortgage for $8,000.

14 Q. When was the assignment from J. Kinsey Taylor to Theodore H. Vetterlein made?

A. In 1868 or thereabouts, I think, or it may have been in 1867.

15 Q. After that assignment did J. Kinsey Taylor suspend payment and call a meeting of his creditors?

A. Yes; he did.

16 Q. And secure a compromise?

A. Yes.

17 Q. What was the aggregate amount of J. Kinsey Taylor's indebtedness to Vetterlein & Co. at this time of the assignment of these policies by him?

A. I don't know; the books of the first firm of Vetterlein & Co. will show. He was not indebted to the firm of Vetterlein & Co., which was adjudicated bankrupt, in any way or in any amount.

(Counsel for complainant gives notice that he will move to strike out the latter part of the answer.)

62 28 Q. Have you the assignments from Theodore H. Vetterlein to you and Theodore J. Vetterlein?

A. No.

29 Q. Where are they?

A. They were delivered by me to the receiver with the policies?

30 Q. Have they never been returned to you?

A. No.

31 Q. When did the firm of Vetterlein & Co. first become so far involved as to call a meeting of their creditors?

A. The firm of Theodore H. Vetterlein & Sons, composed of Theodore H. Vetterlein and Bernhard T. Vetterlein, although they were at no time involved, as implied in the question, owing to proceedings commenced against them by the United States for the forfeiture of four cargoes of tobacco consigned to them, called a meeting of their creditors in May, 1870. This firm at the time had more than sufficient available cash assets to have made it unnecessary for them to suspend.

(Latter part of answer objected to by counsel for complainant as irresponsive and incompetent. Objection overruled. Exception.)

33 Q. When was the action commenced by the Government?

A. I think in 1869.

34 Q. In what part of 1869?

A. I think in June, 1869.

35 Q. How many meetings of creditors were there in May, 1870?

A. Two—a meeting and an adjourned meeting.

36 Q. Were any of the creditors of Vetterlein & Co. present at these meetings?

A. Yes.

37 Q. In pursuance of notice to them?

A. I don't know.

38 Q. Had Theodore H. Vetterlein & Sons failed to meet any of their obligations at that time?

A. No.

39 Q. Did Theodore H. Vetterlein and yourself, at the first meeting, ask from the creditors an extension?

A. No.

40 Q. What request, if any, did you make of the creditors?

A. None, except to appoint a committee to look into their affairs and then offer suggestions as to the best mode of liquidation. The committee was appointed. They made a suggestion and the meeting adopted it.

63 41 Q. What extension did the creditors give to you?

A. Three, six, nine, and twelve months, with seven per cent. interest. I objected to this because the largest amount was payable in three months, and with the state of the market at the time it was utterly impossible to carry this out. I was, however, convinced by the figures which the committee showed me that the assets so far exceeded the liabilities that I allowed myself to be persuaded to attempt a liquidation in that way.

42 Q. Did the committee know more about the condition of your affairs than you did?

A. Being older, perhaps they did. They had the books and the book-keepers before them for several days. The books were all written up at that time, and the committee prepared from them the papers of which copies are annexed to the answers.

43 Q. Who made the statement which the committee referred to in these papers as being made to them?

A. I don't know.

44 Q. Who made the full exhibit of the finances which the committee referred to as presented to them?

A. I think Jacob Kuhlke, the head book-keeper.

45 Q. At the time of the commencement of the proceedings in bankruptcy who composed the firm of Vetterlein & Co., of Philadelphia, and the firm of Theodore H. Vetterlein & Sons, of New York?

A. Theodore H. Vetterlein and myself, Bernhard T. Vetterlein, composed both firms. Theodore H. Vetterlein resided in Philadelphia and had for over forty years. I resided in the city of New York and had for twenty years.

46 Q. At the time of the assignment of the policies by J. K. Taylor to Theodore H. Vetterlein who composed the firm of Vetterlein & Co.?

A. Theodore H. Vetterlein, C. A. Meurer, Theodore J. Vetterlein, and myself. C. A. Meurer resided in the city of Philadelphia; Theodore J. Vetterlein resided there also.

47 Q. What changes were there in the firm of Vetterlein & Co. from the time of the assignment of the policies by J. K. Taylor up — the time of commencement of the proceedings in bankruptcy?

A. On July 6, 1869, C. A. Meurer was requested to withdraw and did withdraw. Then a new firm was formed under the same name, composed of the remaining partners. On December 31, 1869, this second firm was dissolved by consent and went into liquidation, Theodore J. Vetterlein withdrawing and going to Europe, where he remained until the latter part of November, 1870. Those were the only changes. In 1870—January 1, 1870—a new firm of Vetterlein & Co. was formed, composed of Theodore H. Vetterlein and myself.

48 Q. Did any of these firms have written articles of copartnership?

A. No.

64 49 Q. What became of the assets of the firm of which Mr. Meurer was a member?

A. They were liquidated by Theodore H. Vetterlein, Theodore J. Vetterlein, and myself, as the remaining partners of Vetterlein & Co., No. 1, and were applied to the payment of all debts against the firm. This firm was in liquidation yet at the time of commencing those proceedings in bankruptcy.

53 Q. What became of the assets of the firm of Vetterlein & Co., from which Theodore J. Vetterlein withdrew on the 31st of December, 1869?

A. They were collected and applied to the payment of all its obligations and debts. This firm is also in liquidation up to the present time.

54 Q. Who collected the outstanding accounts of that firm?

A. Theodore H. Vetterlein, who had charge of the firm, Theodore J. Vetterlein being in Europe and I living in New York city.

62 Q. Will you look at ledger marked No. 1 on the back and state if the account of J. Kinsey Taylor, as it appears on ledger No. 7, which has been introduced in evidence, was not transferred to ledger No. 1?

A. It was not. There appears to be an entry in ledger No. 1, under date of December 21, 1870, of the amount $11,560.14, which was made by Theodore J. Vetterlein subsequent to his return from Europe, and eleven months after his retirement from the firm, and in the books of the firm with which he had no connection; he made other entries in these books at about the same time.

(Complainant's counsel offers in evidence from ledger No. 1, on page 400, the account headed J. K. Taylor, city.)

(Objected to as immaterial.)

The same was then read in evidence as follows:

1870.

Dec. 21. To balance (208) ---------- $11,560 14

(Complainant's counsel offers in evidence from journal No. 1, folio 208, under date of December 21, 1870, sundries Dr. to sundries; from old ledger, No. 7, J. K. Taylor, $11,560.14, and other items to the amount of $50,000 and upwards to different accounts.)

63 Q. In whose handwriting is page 208 of journal No. 1?

A. Theodore J. Vetterlein's, and page 209 is also in his handwriting.

69 Q. Was the assignment of J. Kinsey Taylor to Theodore H. Vetterlein of these policies taken in his name for the benefit of the existing firm of Vetterlein & Co.?

A. I think it was.

70 Q. Then they belonged to that firm of Vetterlein & Co. as a collateral?

65 A. Partly; yes; because the claim due by Taylor to Vetterlein & Co. was secured by other securities.

71 Q. Is that what you mean by partly?

A. Mr. Taylor was at that time only 32 years of age, and in good health, and the security as to these policies was not considered of any value by any one; the real security was the judgment note and mortgage, as to which I havetestified.

72 Q. Do you mean, then, anything more by "partly" than that Vetterlein & Co. had other and better securities of Taylor?

A. No.

73 Q. Did Theodore H. Vetterlein give you any reason for desiring more life insurance on his own life?

A. Yes; two of my sisters had been married about that time, and the greater portion of his property consisted in real estate; and he was very well aware that certain money would be required at his death, which could only be had either by sacrificing real estate or by collecting funds insured on his life.

Redirect by Mr. TYNG:

95 Q. When these policies on the life of J. Kinsey Taylor were transferred to you was not the firm of Vetterlein & Co. and all the members perfectly solvent?

(Objected to as incompetent.)

A. Yes; the firms then in existence paid all their debts.

Recross by Mr. HILL:

96 Q. What firms do you refer to as the ones that have paid all their debts? When did they go into existence and when cease?

A. All the firms of Vetterlein & Co. and Theodore H. Vetterlein & Sons in which Theodore J. Vetterlein was interested in any way.

97 Q. To what date do you refer as the dates of these assignments to you?

A. I think in 1869.

66 *Deposition of Theodore H. Vetterlein, Duly Taken in This Cause and Filed March 11th, 1882.*

Of this deposition questions and answers 1 to 27, inclusive, of the direct examination, and questions and answers 1 to 12, inclusive, of the redirect examination, were read on the final hearing of this cause on behalf of the defendants as follows:

THEODORE H. VETTERLEIN, a witness heretofore sworn in this action, being further examined on the instance of the defendant, Theodore J. Vetterlein, says as follows, in answer to questions by B. E. VALENTINE, attorney for Theodore J. Vetterlein:

1 Q. At the time the policies of insurance on the life of J. K. Taylor were assigned by you to B. T. Vetterlein and T. J. Vetterlein as trustees did you or not believe yourself insolvent?

(Objected to as incompetent and immaterial and answered subject to objection. Overruled. Exception.)

A. By no means.

2 Q. According to the best of your knowledge of the value of your assets at the time of said transfer, were you, as a matter of fact, solvent or insolvent at the time of said transfer?

(Objected to as before and answered subject to objection.)

A. I was solvent.

3 Q. Please answer the last two questions with reference to the condition of the firm of Theodore H. Vetterlein & Sons, of New York.

(Same objection and answered subject to objection.)

A. They were solvent, to the best of my knowledge.

4 Q. Did you or not believe them to be solvent at the time of that transfer to the trustees?

(Same objection.)

A. I believe them to be solvent.

5 Q. At the time of said transfer did you contemplate either your personal insolvency or that of said firm?

(Objected to as leading. Withdrawn.)

6 Q. Please state whether or not, at or before the time said policies were transferred to said trustees, you had any reason to suppose that you, personally, or the said firm would become insolvent?

(Same objection and answered subject to objection.)

A. I had not.

67 7 Q. State whether or not the said assignment or delivery of said policies were made by you with any intent to prevent the same from coming to any assignee in bankruptcy or insolvency, or whether it was done to prevent the same from being distributed among your creditors, or whether it was done with any intent on your part to in any way impair, defraud, hinder, impede, delay, or evade any of your creditors' rights or any provisions of the bankrupt act.

(Objected to, 1st, as leading; 2d, as incompetent; 3d, as immaterial, and answered subject to objections. Overruled. Exception.)

A. No, sir; it was not.

8 Q. At the time those policies on Taylor's life were assigned by you to said trustees was Taylor an old or young man?

A. He was a young man, about (30) thirty years old—not over thirty.

9 Q. State whether or not, so far as your knowledge goes, he was in good health at the time of the assignment of these policies on his life.

(Objected to as immaterial and irrelevant and answered subject to objection.)

A. He was considered by me so and by others, and was a robust man.

10 Q. Had you, before the time of said assignment of polices, seen or heard anything which led you to believe they were likely to become payable soon?

(Same objections.)

A. No, sir.

11 Q. Will you please state what your intentions were which led you to assign those policies for the benefit of your wife and her children?

(Objected to as incompetent and answered subject.)

A. The reason was so long as I had to pay the premium on these policies and intending prior to increase the insurance on my life direct to the benefit of my wife, therefore I made a transfer.

12 Q. Please explain a little more fully and at length.

(Same objection.)

A. I could not give any other reasons than those I gave you. I had a policy of fifty thousand dollars.

13 Q. I do not ask for any other reason than the one you have given, but I simply wish that you explain a little more fully the answer already given to the question, which I read again to you.

A. I paid the premium, or gave him the money on the policy of $50,000 for two years, and finally concluded to have it reduced down to $10,000.

68 14 Q. Now, explain once more just why you assigned these policies for your wife and children's benefit instead of increasing the insurance on your own life.

A. The policies were paid up, except some little interest. It would have cost me a large amount of premiums on my own life if I then had got reinsured.

15 Q. What is your present age?

A. I shall be 73 in a month.

16 Q. Are you a native of this country?

A. No, sir; I am a German.

17 Q. I show you what purports to be a copy of the first report, filed by the plaintiff in this action, for the information of the general creditors, and which is marked for identification "Exhibit Report No. 1." Will you please examine the list, under the heading of "book debts," and state whether or not in your opinion most of the same were good and collectible at the time of your bankruptcy?

(Objected to as incompetent, and, 2d, that the report itself should be produced if the witness is examined in relation to it.)

(Mr. B. E. Valentine gives notice that the original report will be produced on the final hearing and put in evidence and this exhibit produced for comparison.)

(Complainant's counsel states that the original would be necessary for cross-examination if the witness is examined in relation to it. Objection sustained. Exception.)

(Witness reads the paper given him and marked for identification as above and answers:)

A. I could have collected fifty per cent. of that.

18 Q. By "that" do you refer to the list of book debts?

A. Yes, sir—that is, as far as I have seen that.

19 Q. During the year 1870 or about that time did you suffer any losses by fire?

A. I don't know whether it was in 1869 or 1870—I think it was in the beginning of 1870—I lost by fire a factory building, which I had rented out.

20 Q. About what net income did that building produce?

A. About $5,000 a year.

21 Q. Do you remember the original paper signed, among others, by Demas Barnes, a copy of which is annexed to the answer in this case and designated "Exhibit A," being a report dated May 24th, 1870?

(Objected to as immaterial and irrelevant and answered subject to objection. Objection sustained. Exception.)

(An alleged copy of answer and exhibit is shown to witness by Mr. Valentine.)

A. Yes; I have seen this at the time.

69 22 Q. At what time?

A. At the time it was executed; I saw the original.

23 Q. Where is the original?

A. I cannot tell. It was given to my counsel, Mr. Spencer Millar of Philadelphia. I have been trying to find it, but can't lay my hands on it.

24 Q. Where is Mr. Millar?

A. Mr. Millar, as Mr. Juvenal, is deceased.

25 Q. What efforts have you made to get these papers?

A. I called several times at their offices. They made a hunt for it, but could not find it; it was mislaid.

By Mr. TYNG:

26 Q. In your testimony taken some years ago and recently filed a question appears in substance as follows: "How much was Taylor indebted to you at the time of your bankruptcy?" As matter of fact, was or was not said Taylor indebted to the last firm of Vetterlein & Co. after the withdrawal of Theodore J. Vetterlein?

(Objected to as incompetent and calling for a conclusion of the witness and answered subject to objection.)

A. I could not say without I refer to the books; I hadn't it in mind.

27 Q. Did J. Kinsey Taylor have any transactions with your firm after 1869?

A. No, sir.

70 *Deposition of Theodore H. Vetterlein. Filed March 11th, 1882. Pages 36 to 41, Inclusive.*

1 Q. Mr. Hill, counsel for complainant, has shown you a printed book; do you know anything about the correctness of the book except what Mr. Hill tells you?

Objected to on the ground that the witness has already stated that it is correct.

A. It was made by the appraisers of the assignee.

2 Q. Did you have anything to do with making it out?

A. No, sir.

3 Q. Have you compared it with the original of which it purports to be a copy?

A. No, sir; I could not say that; I never saw the original which they made out first; they had it printed, and this is one of them.

4 Q. You cannot say that you ever saw that book before to-day, can you?

A. Oh, yes; I have seen it before.

5 Q. That identical book?

A. No, sir; not that identical book, but similar, like this.

6 Q. You have been asked by Mr. Hill, counsel for the plaintiff, to testify concerning book entries and transactions appearing, or purporting to appear, on certain books which he has produced before you; are any of the entries in those books in your handwriting?

A. No, sir.

7 Q. Have you turned to any of these entries yourself, or did Mr. Hill merely open the books and point them out to you?

A. Yes; only Mr. Hill. I didn't turn to them; Mr. Hill has shown them to me.

8 Q. Do you recollect, of your own knowledge, any of the transactions whose entries Mr. Hill has so referred to, or do you merely state them because you saw them written or printed on the books?

A. From what I have seen on the books.

9 Q. Have you any recollection of them personally.

A. No, sir.

10 Q. Does the inspection of the books in anywise refresh your recollection, or do you merely give what you see on the books?

A. What I see on the books.

11 Q. It does not, then, refresh your recollection at all?

A. No, sir.

12 Q. And your testimony has been merely to read off the items he pointed out to you?

A. Yes, sir.

13 Q. Do you know anything about the Government claims, except what you have been told by others?

A. No; I never knew anything about them except what I was told.

71 14 Q. You have been asked about certain things that Julius Vetterlein and others did in relation to monies received and monies paid as premiums on policies. Do you know anything about that except what other people have told you?

A. I know that they were paid.

15 Q. Were you present when they were paid?

A. No, sir.

16 Q. Then you know nothing about them except what has been told you?

A. No, sir.

16½. Q. That is all?

A. That is all.

17 Q. And is your knowledge upon the subject of moneys received by them also only hearsay; were you present when moneys were received by them?

A. I think I was present; I won't say that—when it was paid.

18 Q. Were you present when they paid any insurance moneys?
A. No, sir.
19 Q. Or any premiums or insurance policies?
A. No, sir.
20 Q. Did you personally pay any of those premiums?
A. No, sir.
21 Q. And your testimony is only, then, from entries that Mr. Hill has pointed out to you?
A. Yes, sir.
22 Q. You have spoken of intending certain insurance policies for the benefit of relatives in Germany?
A. Yes, sir.
23 Q. Had you provided for the disposition of those funds by your will?

Objected to on the ground that the will is the best evidence.

A. No, sir.

Recross:

24 Q. What did you have to do with condensing those Taylor policies?
A. I took the old policies to the insurance companies and had them condensed.
25 Q. Did you do that personally?
A. No, sir; I had an agent.
26 Q. What agent?
A. A man by the name of Hilt, in Philadelphia.
72 27 Q. Did you take the policies to Hilt?
A. He came to me and got them, and then he went to the insurance companies and told me what they would do, and I accepted that and he returned them to me afterwards.

Objected to by Mr. Valentine as incompetent.

By B. T. VALENTINE:

28 Q. When did you say that Julius Vetterlein has paid the premiums for you on the Taylor and other policies do you not mean that these premiums were paid for account of Theo. J. Vetterlein and B. T. Vetterlein, trustees, and charged against them on their books in due course?

Objected to as leading by Mr. Hill and as incompetent, irrelevant, and immaterial.

A. Yes.
29 Q. In addition to the policies on Taylor's life, what other securities did Vetterlein & Co. hold on account of the indebtedness of Taylor to them?
A. They held a bond and mortgage for $8,000 and a judgment note for $50,000.

THEO. H. VETTERLEIN.

Sworn to before me this 9th day of March, 1882.
[NOTARIAL SEAL.] SIMEON FORD,
Notary Public, Kings and N. Y. Cos.

73 *Deposition of John A. Sharp. Filed January* 26, 1882. *Questions* 48 *to* 57, *inclusive.*

48 Q. Have you a list of the proved claims against the bankrupt firm, the total of which you have assumed to give in your answer to the seventh question?

A. A tabulated statement showing the proved claims has been prepared to file with the assignee's account just as soon as the attorney is ready to file the same.

49 Q. Question repeated.

A. I have prepared it and it is in the hands of Mr. Hill, attorney, ready to present.

50 Q. Is this a list which you prepared from the original claims?

A. It is.

51 Q. Can you state at this time how many of those claims are disputed claims?

A. There are twenty-one, to the best of my own knowledge and belief, disputed in part or whole. Some of them are correct, to a great extent.

52 Q. Have you a list of the assets of the said bankrupt firm which were sold by the assignee and the prices for which they were sold?

A. I have no such list at present in my possession. There is a prepared statement showing all the assets collected by the assignee, which statement is in the hands of Mr. Hill, attorney.

53 Q. Did you make up such statement?

A. I did.

54 Q. From what data or memoranda?

A. From the actual collections as they came in the office.

55 Q. Do you mean from the book of original entry of the assignee?

A. Yes.

56 Q. You kept such a book of original entry?

A. Yes, sir.

57 Q. Is there an account in said book of original entry in which is charged all moneys received from said sales of assets?

A. There is.

* * * * * * *

74 DEFENDANTS' EXHIBIT "A." (March 18, 1882.)

The undersigned, a committee appointed by the creditors of Th. H. Vetterlein & Sons, of New York, beg leave to report—

That after an examination of the statements made of said business, showing the assets and liabilities, we find, after leaving each the Philadelphia and New York house- all their present stock and merchandise and deducting 25 per cent. from all the accounts and bills receivable, there will be remaining in bills receivable, open

accounts, and cash about $241,347.87. In addition to the above they have stated merchandise, bonds, mortgages, real estate, interest in steam vessels, &c., estimated to be worth some $264,788.41. The aggregate liabilities of the two houses of Vetterlein & Co., of Philadelphia, and Th. H. Vetterlein & Sons, of New York, amount to $310,399.23, showing an excess of about $195,740.05 of undoubted value over all liability, besides leaving a large margin contingent, much of which they think may be collected in time by attention.

And now they propose to give extension notes to each creditor as follows: 30 per cent. at 4 months, 20 per cent. at 6 months, 20 per cent. at 8 months, 20 per cent. at 10 months, and 10 per cent. at 12 months, including interest for the time asked in said extension.

We therefore recommend to the creditors the acceptance of the terms proposed, and suggest they give to Chas. F. Tag a deed of trust to secure the creditors to that extent of such real estate as stated, excepting the Brooklyn house put in by H. G. Vetterlein, and which deed of trust shall not mature before the expiration of 15 months.

We also recommend that the debts of sums under $1,000 be excluded from the extension and paid in cash as soon — possible.

New York, May 24, 1870.

CHAS. F. TAG.
JNO. T. AGNEW.
DEMAS BARNES.
J. L. SMALLWOOD.

75 DEFENDANTS' EXHIBIT "B." (Marked for indentification.)

At a meeting of the creditors of Messrs. T. H. Vetterlein & Sons, held in New York on the 24th day of May, 1870, a full exhibit of the finances of the house was presented and considered, after which, upon motion of Demas Barnes, it was—

Resolved, That the thanks of the creditors be presented to Messrs. Vetterlein & Sons for the prompt, concise, and honorable manner in which they have met the demand of their creditors.

Resolved, That the sympathies of the creditors be extended to Messrs. Vetterlein & Sons in their temporary embarrassment, and they have pleasure in stating their unimpaired confidence in the honor and financial standing of their House.

WM. AGNEW & SONS.
CHAS. F. TAG.
DEMAS BARNES.
STROHMAN REITZENSTEIN.
J. S. GANS & CO.
J. L. SMALLWOOD.
H. THIERMANN.

B. VETTERLEIN.

76 DEFENDANT'S EXHIBIT "C."

APRIL 8, 1882.

Assignee's first report to creditors.

SEPTEMBER 12, 1871.

Showing estimated value of assets, $371,324.80.

Recapitulation, p. 9.

Recapitulation.

Assets of Th. H. Vetterlein & Sons and of Vetterlein & Co.:

Cash in hands of assignee	$46,276 23
Book accounts Th. H. Vetterlein & Sons	170,196 07
Book accounts Vetterlein & Co.	77,832 04
A. Hagan and Thos. M. Rettew, local assignees, balance contested before a master	13,000 00
Bills rec'ble, Th. Vetterlein & Sons	150 00
Vetterlein & Co.	12,182 41
Certificates of stocks, bonds, etc., estimated value	5,250 00
Real estate, estimated value beyond encumbrances	35,600 00
Vessel property, as appears by the books Th. H. Vetterlein & Sons	3,614 83
Vetterlein & Co.	7,223 22
	$371,324 80

SOUTHERN DISTRICT OF NEW YORK:

APRIL 26, A. D. 1880.

I do hereby certify that the within is a true copy of the original filed in my office on the 12th day of September, 1871.

HENRY WILDER ALLEN,
Register in Bankruptcy.

77 *Complainant's Evidence in Rebuttal.*

Testimony of THEODORE H. VETTERLEIN, filed March 11, 1882, pages 10, 11, and 12.

Cross-examination by Mr. HILL:

Q. At what date did you make the assignment of those policies to Bernard T. Vetterlein and Theodore J. Vetterlein?

A. It was in July, 1870, when I executed them.

Q. Were they executed in New York or Philadelphia?

A. Philadelphia.

Q. Who prepared them?

A. My son.

Q. Bernard T.?

A. Yes, sir.

Q. Theodore J. Vetterlein is also a son of yours?

A. Yes, sir.

Q. Did you in the latter part of May, 1870, call a meeting of the creditors of Vetterlein & Co. and of Theodore H. Vetterlein & Sons, of New York, at New York?

A. Called a meeting of the firm of Theodore H. Vetterlein & Sons but not of Vetterlein & Co.; we never called a meeting.

Q. Did the creditors of Vetterlein & Co. attend that meeting?

A. I think so; yes, sir; maybe; I believe there were some there, yes, sir.

Q. Did you make any statement to the creditors as to the assets and liabilities of the firms?

A. Yes, sir.

Q. Who informed the creditors as to the amount of those assets and liabilities?

A. Each firm made a statement.

Q. Who prepared the statement of the Philadelphia firm?

A. The book-keeper made it out.

Q. What was his name?

A. Boscher; I cannot think of his first name; Charles, I think it was.

Q. And who prepared the statement of the New York firm?

A. That was made here; that I could not tell you.

Q. Had you, personally, anything to do with either of those statements?

A. I overlooked them.

78 Q. Did Bernard T. Vetterlein have anything to do with either of those statements?

A. That I could not answer, you know.

Q. Did he see them?

A. I presume he did?

Q. Were each of those statements in writing?

A. They were.

Q. Did you give any instructions as to the preparation of either of those statements?

A. I overlooked them, of course; I overlooked and instructed them how to make them out—that is, at Philadelphia.

Q. Had you anything to do with the New York assets?

A. No, sir.

Q. Were those statements laid before the creditors?

A. They were.

Q. Were they read to them, do you recollect?

A. That I could not recollect.

Q. How many meetings were there?

A. I think there were two.

Q. Were you present at each?

A. I was present at the first but not at the second.

Q. And were these statements submitted to the creditors at the first meeting?

A. Yes, sir.

Q. Were they discussed by the creditors?

A. They were discussed by them.

Q. Any questions asked you in reference to them?

A. No, sir.

Q. As the result of these meetings of creditors did the two firms procure an extension from them?

A. The firm of Theodore H. Vetterlein shows they only asked for an extension; Vetterlein & Co., of Philadelphia, never suspended.

79 *Testimony of T. J. Vetterlein. Filed November* 15, 1872. *Questions and Answers* 1, 6, 7 *to* 23, 29 *to* 31, 33 *to* 36, 41, 46, 50.

NOVEMBER 8TH, 1872.

The examination of the witness is resumed, pursuant to adjournment, as follows, viz:

Cross-examination by C. W. MOULTON, Esquire, as attorney for the plaintiff:

1st question. If I understand you correctly, the firm of Vetterlein & Co., of Philadelphia, and the firm of Th. H. & B. Vetterlein & Co. and Th. H. Vetterlein & Sons were all composed of the same persons, with the exception of the interest of Mr. Thierman and your uncle, Bernard Vetterlein, and Charles A. Meurer, from 1858 and prior thereto down to the time of your withdrawal from said firms?

Answer. Yes; down to that time said firms were composed of the same persons, with those exceptions.

6th question by same. Did each of said firms keep regular sets of books, and were such books kept by double entry?

Answer. Yes, they did; as far as I know they were kept by double entry.

7th question by same. Did those books show the amount of capital contributed by each member of those firms?

Answer. They did, with the exception of Th. H. Vetterlein & Son's books.

8th question by same. At what date were the books of Th. H. Vetterlein & Sons opened and who was the book-keeper?

Answer. I do not know when the books were opened. I should judge they were opened in May, 1865. I was not there. I was living in Philadelphia at that time. C. Frerides was the book-keeper. I do not know where he now resides.

9th question by same. If you were not living in New York and did not know when the books were opened how are you able to state that the amounts contributed by each of the partners in Th. H. Vetterlein & Sons was not entered in the books?

Answer. I saw the books afterwards.

80 10th question by same. At the time you examined the books afterwards did you examine them particularly with reference to the entries on the books as to the amounts contributed by each of the partners?

Answer. I examined my account and Th. H. Vetterlein's account. I just cursorily looked over the accounts and shut the books up again.

11th question by same. What was the amount of the capital stock of Th. H. Vetterlein & Sons when that firm came into existence, in May, 1865?

Answer. The capital stock of the firm was about $150,000.

12th question by same. What was the exact amount?

Answer. I cannot tell you.

13th question. What proportion of that capital stock was con-

tributed by Theodore H. Vetterlein, and what by Bernard T. Vetterlein, and what by yourself? Give the amounts.

Answer. Theodore H. Vetterlein contributed about $130,000, Theodore J. Vetterlein about $20,000, and Bernard T. Vetterlein nothing, that I know.

14th question by same. What was the date of your contribution to that capital stock, and in what manner was it paid in?

Answer. I cannot tell the date. It was paid in by the liquidating firm of Th. H. & B. Vetterlein & Co., in dividends.

15th question by same. As I understand it, then, the firm of Th. H. & B. Vetterlein & Co. collected moneys which had become due to them in the usual course of their business and paid it over into the business of Th. H. Vetterlein & Sons as fast as it was collected, after deducting what belonged to the out-going partners. Am I correct?

Answer. Yes.

16th question by same. Then the books of Th. H. & B. Vetterlein & Co. will exhibit correctly the amount of such contributions, will they not?

Answer. Well, I presume they would.

17th question by same. What was your proportion of the business of Th. H. & B. Vetterlein & Co.?

Answer. One-sixth of Theodore H. Vetterlein's profits—one-sixth of his interest—from January 1st, 1863.

18th question by same. How much was the amount of Henry Thierman's interest ascertained to be at the time of the dissolution of the firm of Th. H. & B. Vetterlein & Co., May 1st, 1865?

Answer. I have seen it, but have forgotten.

19th question by same. Where have you seen it?

Answer. I saw it upon the trial balance sheet of the books at the counting-room of the firm in 1865.

81 20th question by same. From what other sources than the contributions named by you as from the firm of Th. H. & B. Vetterlein & Co. to the firm of Th. H. Vetterlein & Sons did the capital stock of the latter firm come?

Answer. I know of none; the Philadelphia house helped them along.

21st question by same. At the time the moneys were collected from the outstanding debts of the firm of Th. H. & B. Vetterlein & Co., in liquidation, were they divided up among the members of the firm; and, if so, by whom was it done—after paying or providing for the debts of the firm, I mean?

Answer. I should judge they were; I was not there at the time; I do not know.

22d question by same. Do the books of Vetterlein & Co., of Philadelphia, exhibit correctly all the business transactions of that firm, so far as you know or have reasons to believe?

Answer. They do, I think.

23d question by same. Do the books of this last-named firm exhibit also the accounts of each member of that firm?

Answer. They do.

29th question by same. What was the amount of your proportion of the profits of that firm each year while you were a partner until you withdrew?

Answer. I could not tell you.

30th question by same. Will the books themselves show?

Answer. I suppose they will.

31st question by same. What is the amount, according to your best recollection?

Answer. That I cannot tell, from the fact that large amounts were carried to "profit and loss," which left no profits to be divided at all, and some of these losses or doubtful debts have been collected since my retirement.

* * * * * * *

33rd question by same. Will the books of that firm show the amount you drew out for your personal use from 1863 to 1869?

Answer. I suppose they will.

34th question by same. What was the consideration for which you were to receive one-sixth of the interest of Th. H. Vetterlein in the firm of Th. H. & B. Vetterlein & Co.?

Answer. I gave them my work and energy in taking charge of their Western business for them; and, furthermore, father, to recompense my energy and activity of years previous and his good-will for these considerations, gave me one-sixth of his interest in the business.

35th question by same. I understand from your answer that your father gave you your interest in the concern without any
82 contribution from you whatever to the capital stock of Th. H. & B. Vetterlein & Co. Am I correct?

Answer. Yes.

36th question by same. Upon which books is the account of J. Kinsey Taylor kept which shows the original indebtedness for which the policy of insurance upon his life was assigned as security?

Answer. The Philadelphia books.

* * * * * * *

41st question by same. I have understood you to say in your testimony that the amount of bad debts which were written up and carried to profit and loss account on the books of the Philadelphia firm more than balanced the amount of net profits which had been up to that time realized by that firm. Please state when this writing up of the books and ascertaining the amount of bad debts took place.

Answer. It was done about the first of July, 1869.

* * * * * * *

46th question by same. When did you go into the employment of Vetterlein & Co., of Philadelphia, as clerk?

Answer. In October, 1857.

* * * * * * *

50th question by same. Were the four other life policies that were assigned to you by your father so assigned about the same time as the three Taylor policies?

Answer. They were.

83 *Testimony of Bernhard T. Vetterlein. Filed March 2d, 1882.* (*Questions and Answers* 8, 9, 21 *to* 27, 32 *to* 34, 49 *to* 94.)

Cross-examination:

8 Q. Are you a practicing attorney; and, if so, for what length of time have you been practicing as a lawyer in this city?

A. I was admitted many years ago. I have practiced very little. My practice has been confined to the equity side of the United States courts.

9 Q. With what offices have you been connected?

A. I was admitted about 1862 from the office of Hooper C. Van Vorst. From 1862 to 1870 I had no connection with law in any way. From then I was attached to the office of Keller & Blake until both partners died, and since the latter part of 1881 and up to the present time with Wetmore, Jenner & Thompson.

* * * * * * *

21 Q. Did Vetterlein & Co. write off any portion of this indebtedness to profit and loss?

A. Nearly all of it.

22 Q. What amount of it did they write off to profit and loss?

A. Over $40,000.

23 Q. Was this done while they held the judgment note to which you have referred?

A. Yes.

24 Q. What amount did this leave standing on the books of Vetterlein & Co. against J. Kinzey Taylor?

A. Probably $9,000 or $10,000.

25 Q. Will you look at the ledger here present and ascertain accurately?

A. I will look at the ledger and point out the account. I find it in the ledger of Vetterlein & Co., No. 7, folio 433.

Plaintiff's counsel offer their account in evidence (marked Exhibit 11, Mar. 18, 1882).

26 Q. Are the charges in this account for life insurance the premiums on these policies to which you have referred?

A. No; they are known as interest notes.

27 Q. Interest notes on these policies to which you have referred?

A. I presume so.

84 32 Q. When were those four cargoes of tobacco received by the firm?

A. By the firm of Theodore H. Vetterlein & Sons? In the latter part of 1868 and during 1869, I think.

33 Q. When was the action commenced by the Government?

A. I think in 1869.

34 Q. In what part of 1869?

A. I think in June, 1869.

* * * * * * *

49 Q. What became of the assets of the firm of which Mr. Meurer was a member?

A. They were liquidated by Theo. H. Vetterlein, Theo. J. Vetter-

lein, and myself, as the remaining partners of Vetterlein & Co. No. 1, and were applied to the payment of all debts against that firm; this firm was in liquidation yet at the time of commencing these proceedings in bankruptcy.

50 Q. Were the books of the firm of which Mr. Meurer was a member written up?

A. They were up to 1870, when they were taken in charge by the complainant in this case.

51 Q. Were the same set of books continued by the succeeding firm?

A. No; except in so far as some of the books which had just been opened.

52 Q. Did not the succeeding firm use the same journal and ledger, and is not that the ledger which was shown you yesterday, marked No. 7, and the journal, which I now show you, marked No. 10?

A. The succeeding firm continued on in the same journal and ledger, and I see, upon examination, that this ledger covers the period from January 1, 1865, down to January 1, 1870; there are no new accounts opened in this ledger after January 1, 1870; the ledger and journal before me are those of the firms which I have designated as numbers one and two.

53 Q. What became of the assets of the firm of Vetterlein & Co., from which Theodore J. Vetterlein withdrew on the 31st December, 1869?

A. They were collected and applied to the payment of all its obligations and debts; this firm is also in liquidation up to the present time.

54 Q. Who collected the outstanding accounts of that firm?

A. Theodore H. Vetterlein, who had charge of the firm, Theo. J. Vetterlein being in Europe and I living in New York city.

55 Q. Did the proceeds of the sales and collections go into the bank account of the succeeding firm?

A. The collections were first entered into a separate cash-book and transferred into a separate ledger, but the amounts were deposited in the same bank or banks as those of the succeeding firm.

56 Q. Did the proceeds of the sales and collections of the assets of that firm appear in the books of the succeeding firm?

A. I think not.

85 57 Q. Will you look at the ledger marked No. 1, now shown you, and see if you are not mistaken?

A. On a hasty glance at this ledger, which contains 680 pages, I feel convinced that my previous answer was correct.

58 Q. Look at the ledger which we have referred to, marked No. 1 on the back, and see if it was not opened on July 7th, 1869, instead of January 1st, 1870.

A. The ledger No. 1 and journal No. 1 were opened at the time Meurer went out, about July 7th, 1869.

59 Q. Was this journal No. 1 and ledger No. 1 continued down to the time of the bankruptcy proceedings?

A. This ledger and journal was continued far beyond that; they ran into 1871.

60 Q. Were not the balances of merchandise account and cash, real estate, and other similar items, as they appeared in ledger No. 7, carried forward to ledger No. 1?

A. I decline to answer that question, on the ground that the books before me speak for themselves, and all the knowledge I have upon the subject is derived from what appears on those books.

61 Q. Complainant's counsel offers in evidence from ledger No. 7, fol. 272, under the account headed Theo. H. Vetterlein, the entries dated July 7th, 1869.

Counsel for defendants object to the introduction of a part of this account unless the whole is introduced.

Counsel for complainant offers in evidence the whole account, commencing July 7th, 1869, and reads therefrom as follows from the Dr. side of the account:

July 7th, 1869. To stock account merchandise on hand this day		$30,526 22
Fixtures		600
Cash transfer		5,000

Counsel for complainant also offers in evidence the account of Theodore H. Vetterlein, in ledger No. 1, on page 2, and read from the credit side thereof three items under date of July 7, 1869, as follows:

By merchandise on hand this date	$30,526 22
Store fixtures	600
Cash	5,000

62 Q. Will you look at ledger marked No. 1 on the back and state if the account of J. Kinzey Taylor, as it appears on ledger No. 7, which has been introduced in evidence, was not transferred to ledger No. 1?

86 A. It was not; there appears to be an entry in ledger No. 1, under date of December 21, 1870, of the amount of $11,560.14, which was made by Theodore J. Vetterlein subsequent to his return from Europe and eleven months after his retirement from the firm and in the books of the firm with which he had no connection. He made other entries in these books at about the same time.

Complainant's counsel offer in evidence from ledger No. 1, on page 400, the account headed J. K. Taylor, city.

Objected to as immaterial.

The same was read in evidence as follows:

PLAINTIFF'S EXHIBIT 16. April 8, 1882. J. F. M.

J. K. Taylor, city.

DR.							CR.
1870. Dec. 21	To balance	208	$11,560 14				

Complainant's counsel offers in evidence from journal No. 1, folio 208, under date of December 21, 1870:

Sundries Dr. to sundries. From old ledger No. 7.

J. K. Taylor	$11,560 14

And other items to the amount of $50,000 and upwards to different accounts.

63 Q. In whose handwriting is page 208 of journal No. 1?

A. Theodore J. Vetterlein, and page 209 is also in his handwriting.

64 Q. Do you know of any entry in either of these ledges, No. 7 or No. 1, which will show any new or additional capital put into any of these firms at the time of the retirement of Mr. Meurer or at any time thereafter?

A. There is no entry of any cash contributed; the merchandise account and profit and loss account show a large increase of capital by way of profits.

Latter part of answer objected to and notice of motion to strike it out.

65 Q. You have stated that the books were written up at the date of July 7, 1869; please turn to the profit and loss account and state what profit or loss was then credited or charged to the partners.

A. Without going through the books I cannot tell. The profit and loss account is on page 33 of ledger No. 7.

87 Complainant's counsel offers the profit and loss account on page 33, and reads from the credit side, under date of July 6, 1869: Sundries, loss, $106,108.73, journal, page 120; also from page 120 of the journal No. 10, July 6, 1869.

Sundries Dr., to profit and loss.

Theo. H. Vetterlein, 50% of $106,108.73	$53,054 36
Theo. J. Vetterlein, 15%	15,916 31
B. T. Vetterlein, 15%	15,916 31
Charles A. Meurer, 20%	21,221 75
	$106,108 73

Complainant's counsel also reads from the debit side of profit and loss, July 6, 1869:

Sundries (119)	$117,662 57

And from the journal No. 10, page 119, July 6, 1869, as follows:

88 Journal No. 10, p. 119, July 6, 1869 (introduced at folio 312*).

Profit and Loss Account.

To Sundries, Dr.

151	6 S. D. Lottiers	$7,558 78
161	" Wm. Crampton & Sons	15,454 32
202	" Geo. Muller	1,139 41

521	6	Wm. Bellmer	195 14
224	"	John Mayers	837 65
244	"	E. Y. Hecker	88 97
283	"	Jersey Well Oil C'y	2,047 82
285	"	Mullingar Oil C'y	489 96
287	"	Bissel Oil and Manuf'g C'y	10,000 00
299	"	Bean farm	1,000 00
"	"	Waller farm	516 67
302	"	Steamer Cambria	3,500 00
356	"	Gaston & Simpson Gold & Silver Mining Company	1,000 00
357	"	Phila. & South Mail R. C'y	800 00
365	"	E. Webb	9 78
389	"	Wm. Bechtold	202 32
392	"	C. M. Meyer	52 50
404	"	Strauss & Williams	400 61
406	"	Fr. Wood	1,534 42
412	"	L. M. Prornie	193 25
412	"	Th. A. Mann	2,729 16
418	"	A. H. Mickle & Sons	5,356 88
419	"	D. L. Keyser	225 79
433	"	J. K. Taylor	40,000 00
436	"	Wm. B. Mann	10,000 00
"	"	Wiley & Bro	4,000 00
465	"	Alleghany farm	1,000 00
"	"	Preston Coal Imp. C'y	6,000 00
495	"	Gust. Schraisshulin	458 53
538	"	D. W. Clemmer	325 92
542	"	F. Andress	109 80
550	"	Wm. Boehm	245 50
551	"	Isaac H. Kline	105 51
553	"	Dan'l Haggerty	63 87
			$117,662 57

89 66 Q. Were the books written up as of the date that Theodore J. Vetterlein withdrew from the firm?

A. They were, and the profit and loss account is also on page 33 of the ledger No. 7.

67 Q. Turn to the account of Theodore J. Vetterlein as it stood on the 6th July, 1869.

A. It is on page 275 of ledger No. 7, and shows a balance to his credit of $2,603.23, which is carried over to page 448 of the same ledger and as of January 1, 1870; the account being balanced, there was to his credit the sum of $2,643.80. He was also credited November 30, 1870, with interest, $107.44, and debited, under date of March 31, 1870, to profit and loss account, $713.08, and the account remains open in that ledger No. 7.

Account marked Complainant's Exhibit 19 as follows:

90 COMPLAINANT'S EXHIBIT 19.

DR.

1869.				
Jan'y 9	To cash		37	$15 00
" 22	" W. B. Warne		38	18 25
" 25	" cash		38	25 00
" 28	" ditto		36	26 00
Feb'y 1-27	" ditto		47	51 00
" 26	" ditto		41	20 05
M'ch 1-31	" ditto		57	11 30
April 7	" segars		59	11 20
" 17	" cash stock p'd A. T		70	100 00
" 19-20	" ditto		70	100 00
" 28	" ditto		70	124 91
" 29	" segars		60	3 00
" "	" ditto		61	5 20
" 1-30	" cash		71	37 00
June 7	" ditto Dante		92	30 00
" 17	" segars		85	10 40
" 30	" ditto		86	5 20
" 1-30	" cash		93	45 95
July 6	" ditto		104	15 00
July 6	" Th. V. & Sons, Feb. 16		103	50 00
" "	" ditto, March 15		103	100 00
" "	" " " 15		103	50 00
" 31	" segars		97	7 50
" 1-31	" cash		105	110 50
" 6	" profit & loss ac., loss		120	15,916 31
" "	" balance			2,603 23
				$19,492 00
1869.				
Dec'r 3	To balance			$2,643 80
				$2,643 80
1870.				
M'ch 31	To profit and loss ac		164	$713 98

91 68 Q. Was there any other account with Theodore J. Vetterlein in either ledger No. 7 or No. 1?

A. Yes; on page 4 of ledger No. 1, beginning with an entry dated July 31, 1869, and ending with an entry January 31, 1871, and the account is yet open.

Complainant's counsel offers the account on page 4 of ledger No. 1 in evidence and reads from it:

TH. J. Vetterlein.

CR.

1869.			
Jan'y 1	By balance	-----	$18,674 53
April 23	" cash	-----	124 91
July 31	" segars	110	7 50
" "	" cash	116	110 50
" 6	" interest on ac. up to date	117	574 56
			$19,492 00
July 6	By balance from	375	$2,603 23
Dec'r 31	By interest on account	148	40 57
			$2,643 80
1870.			
Jan'y 1	By balance	-----	$2,643 80
Nov. 30	By interest on account	170	107 44
	2,037.26		$2,751 24
			713 98
	Cr. given him for this balance on ledger No. 1	-----	$2,037 26

1870.
Jan'y 1. To balance ---------- $746 86
July 1. " " ---------- 1,218 01

And also from the credit side of the account:

Dec. 21, 1870. By balance (208) ---------- $2,037 26
" 1, " " Theo. H. V. & Sons (209) ---------- 1,479 55

The first of these items being a transfer from ledger No. 7. Account marked "Complainant's Exhibit 21" as follows:

92 COMPLAINANT'S EXHIBIT 21. Vetterlein & Co.

DR.

1869.				
July	31	To segars	5	$7 50
"	"	" cash	8	95 50
Aug.	1–31	" ditto	13	120 00
Sept'b'r	2	" segars	15	5 20
"	30	" cash	22	122 00
Oct'b'r	7	" ditto, book binding	29	10 80
Nov'b'r	12	" ditto, Ohio trip	36	50 00
"	30	" ditto	36	285 00
Dec'b'r	14	" ditto	48	100 00
"	23	" ditto	48	25 00
"	1–31	" ditto	49	20 25
"	31	" interest on ac. up to date	53	10 61
				$851 86
1870.				
Jan'y	1	To balance		$746 86
Jan'y	17	" cash paid Weik	65	10 00
"	18	" ditto " Fox	65	60 75
"	31	" ditto	65	271 29
June	1	" ditto, subscription	121	9 00
July	30	" L. Francke	129	25 00
Nov.	14	" cash, freight	182	18 15
"	30	" ditto	183	9 00
"	"	" segars	189	10 00
"	"	" interest on ac.	186	57 25
"	"	" ditto " ac.	186	3 21
				$1,220 51
1870.				
Dec.	1	To balance		$1,218 01
Dec.	21	" cash	202	15 00
"		" Ch's & W. Smith's note, due March 23	204	450 00
"		" R. O. Moorhouse & Co., due April 23	204	450 00
"		" H. Meyers & Co.'s note, due March 24	204	883 80
"		" Fr. Spiecker's note, due Feb'y 22d	204	500 00
				$3,516 81
1870.			No.	
Dec.	31	To cash	206	$20 50
1871.				
Jan.	31	" do	212	37 00

ledger I, page 4. Th. J. Vetterlein.

CR.

1869.				
Oct'b'r	30	By cash	28	$5 00
Dece'b'r	28	" ditto of W. B. Mann	46	100 00
"	31	" balance		746 86
				$851 86
March	19	Cash div. on. 4 shares A. & P. T. stock	84	$2 50
Dec'r	31	" balance	"	1,218 01
				$1,220 51
1870.				
Dec'r	21	By balance	208	$2,037 26
"	1	" Th. H. V. & Sons	209	1,479 55
				$3,516 81

93 He also offers from page 200 of journal No. 1, Dec. 1, 1870:

Theo. H. Vetterlein, Dr., to Theo. J. Vetterlein.

For expenses, &c..... $1,479 55

69 Q. Was the assignment of J. Kinzey Taylor to Theodore H. Vetterlein of these policies taken in his name for the benefit of the then existing firm of Vetterlein & Co.?

A. I think it was.

70 Q. Then they belonged to that firm of Vetterlein & Co. as a collateral?

A. Partly; yes; because the claim due by Taylor to Vetterlein & Co. was secured by other securities.

71 Q. Is that what you mean by "partly?"

A. Mr. Taylor was at that time only 32 years of age and in good health, and the security as to these policies was not considered of any value by any one. The real security was the judgment note and mortgage, as to which I have testified.

72 Q. Do you mean, then, anything more by "partly" than that Vetterlein & Co. had other and better security of Taylor's?

A. No.

73 Q. Did Theodore H. Vetterlein give you any reason for desiring more life insurance on his own life?

A. Yes; two of my sisters had been married about that time, and the greater portion of his property consisted of real estate, and he was very well aware that certain money would be required at his death, which could only be had either by sacrificing real estate or by collecting funds insured on his life.

74 Q. For what purposes would these moneys be required at his death?

A. The most of the real estate owned by him was subject either to ground rent or mortgage, and money would be required to pay the interest and taxes on these various properties. There were, besides, ten children, some married and some not, the younger ones looking to him or to those which succeeded him for the necessary means to enable them to have their education completed.

75 Q. Would not the real estate of which you have spoken meet the expenses of it?

A. Yes; it would, probably, after three or four months; but this money to be derived from the insurance policies was to have been used in the event if the income should not be immediately forthcoming, and to keep the properties in a remunerative condition.

76 Q. How would the assignment of the Taylor & Mann policies which you suggested as a substitute for the policies on his own life meet these payments?

94 A. I never thought that Theodore H. Vetterlein would die within any time where it would have been necessary to make use of these policies mentioned in the question; but if it should be I knew very well that I could use these policies as a security on which to raise any absolutely necessary funds which may have been required.

77 Q. So far as meeting these payments of which you have spoken

is concerned, what difference would it make whether these policies remained the property of the firm standing in the name of Theo. H. Vetterlein or were transferred to you in trust?

A. Only this: That if these policies had not been transferred to me in trust Theodore H. Vetterlein would have insured his life for the same purposes and in the same amount. By the transfer of these policies a great saving was made, it being a family matter, the firms being perfectly solvent at the time, Mr. Taylor being under thirty-two years of age and in good health, and Mr. Mann being also in good health and between forty-five and fifty years of age, and it being possible to reduce these policies to a figure which would not require any premiums to be paid. I was of the opinion that these policies should be assigned to me in trust for the same purposes as Theodore H. Vetterlein would have insured his life for.

78 Q. (Question repeated.)

A. Under the will of Theodore H. Vetterlein I am the trustee and executor. This will was made and the appraised value of the estate made by me and other persons competent was over $800,000. I had been for very many years the private secretary of Theodore H. Vetterlein, and with the consent and approval of all the members of the family I should have acted as his executor after his death, and that is why these policies were transferred to me in trust.

79 Q. Can you give any further answer to the question?

A. I think I have fully answered the question.

80 Q. Will you explain what difference it would make in the event of the death of Theodore H. Vetterlein whether you held these policies as sole surviving partner of the firm or as trustee for the wife and children?

A. In the one case there would be money immediately available for the purposes of the proper support of Mr. Vetterlein's wife and of the children who would require it. In the other case it might take months before that amount of money would be available, and, as I understood it, the only theory upon which life insurance is based is to provide by the insured to cover the purposes for which these policies were assigned to me in trust.

81 Q. In fact were the Mann policies transferred to you and Theodore J. Vetterlein on the same trust?

A. Yes.

95 82 Q. Were any other policies transferred to you in (?) the same trust?

A. Yes; two policies on the life of Theodore H. Vetterlein were in the possession of Demas Barnes, the complainant, as special receiver, pursuant to an agreement between counsel. I also hold other policies in trust for the same purposes, which have nothing to do with this estate in any way.

83 Q. Were all these policies of which I have spoken transferred to you at the same time?

A. They were delivered to me at the same time, I think, but whether the transfers were made and recorded at the same time I can't state. The purpose of making all these transfers were the same—the benefit of my mother and her children.

84 Q. Will you explain how she could be benefitted by you holding the policies on the life of Theo. H. Vetterlein, as trustee, instead of holding them as his executor?

A. In the one case I would not be obliged to give any bonds, and would have absolute disposal of the monies coming from these policies. In the other case the proceeds of these policies would follow the course of the law as to the distribution of them.

85 Q. Who prepared the assignments, and where were they executed?

A. I prepared the assignments, and I think they were executed in Philadelphia and recorded by me.

86 Q. What do you mean by recorded?

A. Filing the assignments with the respective companies.

87 Q. Were the policies at that time in Philadelphia?

A. Yes.

88 Q. Up to the time of their assignment had they been in New York?

A. No.

89 Q. How soon after the assignment did you bring them to New York?

A. Never until after this action was commenced.

90 Q. Who prepared proofs of the death of J. Kinzey Taylor upon these policies?

A. A life insurance broker in Philadelphia.

91 Q. When you speak of the Taylor policies being reduced in amount were the original policies surrendered and new paid-up policies taken for the reduced amount?

A. I do not remember. No premiums were paid upon the reduced policies; they were paid-up policies.

92 Q. Where was Theodore J. Vetterlein at the time of the assignment of these policies to you and him?

A. In the West; in Ohio or Kentucky.

93 Q. What, if anything, has he had to do with those assignments?

A. Nothing.

96 94 Q. When was there a balance-sheet from the books of Vetterlein & Co. last prepared prior to the bankruptcy proceedings?

A. I think November 20, 1870; there is a balance-sheet book in existence which would show exactly; about the same time there was a balance-sheet of Theo. H. Vetterlein & Sons; these balance-sheets refer only to the firms which have been adjudicated bankrupts.

DEMAS BARNES, the complainant, called on his own behalf at the final hearing of this cause in the district court, and being duly sworn, testified, among other things, as follows:

"The amount of assets in gross received from the individual and joint estates of the bankrupts was about $110,000; on this there were mortgages of about $10,000 proven; I have got all I can realize except the claim in this suit."

"The debts, exclusive of liens as proven, are about $260,000, besides the claim of the United States of $100,000."

"I attended two meetings of the creditors in the spring of 1870, when an extension was given to the bankrupt. I did not make any investigation of their affairs except by inquiry. These meetings were held in Water street, New York city. The creditors of both firms attended; I think it was in May, because I left the city in June following."

97 *Deposition of Theodore H. Vetterlein. Filed March 11th, 1882. Pages 18 to 25, 33 to 36, and 40 (to be read at folio 333).*

Q. In your direct examination you have spoken of a fire?

A. Yes, sir.

Q. Can you fix the date of that fire?

A. No, sir; I could not exactly, unless I see the insurance policies that were cancelled.

Q. Was it not before the month of July, 1870?

A. Yes, sir.

Q. How long before, to the best of your recollection?

A. I won't be positive whether it was before or after July, 1870.

Q. Is there anything in the books that will enable you to state?

A. Yes; I think there is.

Q. Was the property insured?

A. Certainly; that is the reason why the cash-book ought to show it.

Q. In what amount?

A. The property was insured in two parts; the one which was the least insured burned all down, and that which was insured the most was only slightly damaged. The cash-book will show you where the insurance was collected.

Q. What was the amount of the insurance, to the best of your recollection?

A. About $40,000 or thereabouts; could not be positive.

Q. Had this fire anything to do with the bankruptcy of either firm?

A. No, sir.

Q. What was the whole amount of the assets on the paper shown you out of which you said you could have collected 50 cents on the dollar?

A. I believe this sum is correct, $80,258.13.

Q. Does this amount of $80,258.13 include the claim against E. A. Souder & Co. of $37,206.88?

A. Yes, sir.

Q. When did that firm go into bankruptcy?

A. In March or April, 1870; one of the two.

Q. Do you know what dividends the assignee in bankruptcy of that firm has paid?

A. I do not know.

Q. In saying that you could collect 50 cents on a dollar of this $80,258.13, what amount did you estimate that you could collect from E. A. Souder & Co.?

A. Well, I calculated to have collected 50 per cent., because they promised they would pay me that.

98 Q. Was that promise after they were in bankruptcy or before?

A. Before and after.

Q. Did this $80,258.13 include a claim against Wm. B. Mann for $9,124.89?

A. Yes, sir.

Q. What did you estimate you could collect from that claim?

A. Fifty cents, because I had an insurance policy.

Q. Did you treat that policy as a valid policy assigned to you in your estimate?

A. Yes, sir.

Q. Did this $80,258.13 include a claim against J. K. Taylor for $11,560?

A. Yes, sir.

Q. And also one against L. B. Grim for $6,718.79?

A. Yes, sir.

Q. In your estimate did you consider that you could collect 50 per cent. of those claims?

A. Yes, sir.

Q. Will you explain why you assigned the policy on your own life, which you had held for six years, at that particular time to your two sons?

A. For the same reason as I stated before. I had it at first for outside family purposes, for brothers and sisters of mine in Germany; but, since they did not want it, I had it transferred over. That is the reason it was blank, in my own name.

Q. The policy on your own life you had intended for relatives in Germany?

A. That is how it was.

Q. But you never had assigned it to those relatives?

A. No, sir.

Q. How old was Mr. Mann at the time of these assignments?

A. Might have been 50 years old.

Q. Had the age of Mr. Mann or of Mr. Taylor anything to do with these transfers?

A. No, sir.

Q. Where were all these policies at the time of these assignments?

A. They were in possession of my son, Bernard T., for some time.

Q. In Philadelphia?

A. No; in New York.

Q. He states that they were in Philadelphia. Is that correct or not?

A. They were at first in Philadelphia, but afterwards I gave them to him, and now they are again in Philadelphia.

Q. When did they come to New York first?

A. Some time in 1868 or 1869.

99 Q. How long did they remain in New York then?

A. Until they were transferred, I believe.

Q. At the time of the transfer in Philadelphia all these policies were in New York?

A. I believe they were.

Q. Have you any recollection on the subject?

A. No, sir.

Q. Had Bernard T. Vetterlein any safe in Philadelphia of his own?

A. No; kept all in one safe there.

Q. Had Bernard T. any private papers in Philadelphia?

A. He may have had private papers, which, of course, he kept to himself in envelopes, which I did not disturb.

Q. Do you know of any such?

A. No; there was various papers which had been laying there in the fire-box, in his writing, which I did not interfere with.

Q. Did he have any tin box there that you know of?

A. No, sir; that I don't know.

Q. When did the Government first make a claim against you or either firm?

A. Somewhere in 1869—some time in the summer of 1869. I cannot recollect positively the date.

Q. When were the importations on which the claim was made?

A. 1868 and 1869.

Q. Did they commence an action against you in New York?

A. I understood so.

Q. Did they also commence an action against you in Brooklyn?

A. I don't know whether they did in Brooklyn.

Q. What was the amount of the claim the Government made?

A. It never was stated at first, but they made a claim on account of irregularities.

Q. What was the amount of it?

A. That I could not tell.

Q. Was it not over $200,000?

A. I don't know.

Q. Had this claim of the Government anything to do with your calling a meeting of the creditors of which you have spoken?

A. No, sir.

Q. Nothing at all?

A. No, sir.

100 Q. You never paid the Government anything on that claim?

A. No, sir.

Q. Vetterlein & Co. had an account with Theodore J. Vetterlein?

A. Yes, sir.

Q. (Page 448 of ledger No. 7 shown witness.) Is that his account?

A. It was his account.

Complainant's counsel offers in evidence account of Theodore J. Vetterlein, on page 448 of ledger No. 7, which, although not closed, shows in pencil a balance of $2,037.26.

Q. Was this balance to Theodore J. Vetterlein's credit of $2,037.26 carried forward to the new ledger?

A. I presume it was.

Q. Is there any other account than the one I have introduced in evidence between Theodore J. Vetterlein and Vetterlein & Co.?

A. Yes, sir.

Q. Point it out, please.

Witness points out the open account on folio 4, ledger No. 1, showing $57.50 to the debit of Theo. J. Vetterlein.

Q. Was the balance of $2,037.26 to his credit in ledger No. 7 carried to this account in ledger No. 4?
A. Well, the books show it is.
Q. Under what date?
A. The book shows it December 21, 1870, folio 208 of the journal.
Q. (Showing page 208 of journal.) Is that the journal entry?
A. Yes, sir.

Complainant's counsel offers in evidence journal entry under date of December 21, 1870:

"Dr. to sundries. From old ledger No. 7.
"Theodore J. Vettertein ---------- $2,037.26"

Q. In whose handwriting is that entry?
A. That is Theodore J.'s handwriting.
Q. On the ledger account, see p. 4, under date of December
101 1st, 1870, Theodore J. Vettertein is credited by Theodore H. Vettertein & Sons, $1,479.55.
A. Yes, sir; according to the books it is so.
Q. Will you point out the journal entry of that transaction?

(Witness indicates journal entry on p. 209 of ledger No. 1.)
Complainant's counsel offers the entry in evidence.

Q. Did that transfer to Theodore H. Vettertein & Sons, under date of December 1st, 1870, balance the account of Theodore J. Vettertein with Vettertein & Co.?
A. As the ledger shows there, it did.
Q. I see, under date of December 21, 1870, Theodore J. Vetterlein is charged with various notes, for $450, $450, $873, and $500, respectively. When did he receive those notes?
A. That I could not tell you exactly, unless it must have been on the 21st of December.
Q. 1870?
A. 1870.
Q. When were the books Vetterlein & Co. balanced in 1869?
A. I think on the 6th of July.
Q. What amount, if any, was there written off to profit and loss?
A. That I could not tell you.
Q. (Showing witness entry on page 106). What is the amount?
A. According as the books show there, $106,108.73.
Q. Showing witness journal entry on page 120 of journal No. 10). Is this the journal entry?
A. Yes, sir.

Complainant's counsel offers entry in evidence.

Q. How long have you been in this country?
A. Since 1835.

(Recross, p. 40:)

Q. What did you have to do with condensing the Taylor policies?
A. I took the old policies to the insurance companies and had them condensed.

Q. Did you do that personally?
A. No, sir; I had an agent.
Q. What agent?
A. A man by the name of Hilt, in Philadelphia.
Q. Did you take the policies to Hilt?
A. He came to me and got them, and then he went to the insurance Co.'s and told me what they would do, and I accepted that and he returned them to me afterwards.

102 COMPLAINANT'S EXHIBIT 13. December 21, 1870.

Sundries Dr. to sundries. From old ledger No. 7.

42	L. Bremer & Sons		$85 50
394	L. Lottier		29 30
34	Th. H. Vetterlein		52,133 57
394	Bean farm		581 40
4	Theo. J. Vetterlein		2,037 26
338	Dbt. debtors		9,286 61
395	Great Central Basin Oil Co.		515 05
79	Bills rec'ble:		
	A. F. Meurers, due Dec. 3, 1872	$2,120 28	
	Wiley & Bro., due Feb., 1871	824 01	
	Wiley & Bro., due Aug. 12, 1871	852 76	
	Wiley & Bro., due Feb. 1, 1872	881 50	
	Linck's note	100 00	
8	Profit & loss ac.	3,570 73	
13	Cash ac.	1,749 64	
60	Real estate ac.:		
	Grim's mortgage	1,500 00	
	Wiley's "	2,000 00	
	Gr. West Philad'a	2,855 48	
52	Jos. Cressman	4,941 62	
395	Wm. Crumpton & Son	10 50	
82	Sam'l Harrison	4,738 48	
396	G. Müller	1,343 34	
396	John Myers	25 00	
397	Chs. A. Meurer	1,168 79	
397	Bissel Oil Co.	4,975 00	
399	Steamer Cambria	2,312 50	
398	F. W. Eger	99 45	
398	Strauss & Williams	15 00	
399	F. Wood	500 00	
400	L. M. Promie	150 00	
400	J. K. Taylor	11,560 14	
401	Wm. B. Mann	9,124 89	
401	L. B. Grimm	6,718 79	
343	H. Wiley & Bro.	53 92	
402	Wm. Soby	476 87	
		$64,668 49	$64,668 49

103 COMPLAINANT'S EXHIBIT 14. (Led

DR.

1869.				
July 7	To stock ac., mdse. on hand this day		120	$30,526 22
"	" fixtures		120	600 00
"	" cash tr'sfer		124	5,000 00
Dec'r 31	" stock ac., mdse. on hand this day		150	990 07
"	" 50 shares Union B'k'g C'y stock, 4 installments		153	2,000 00
"	" Th. H. Peters ac., balance		153	3,960 80
"	" T. B. Miller & Co., Tool M'f'g Co., 212 shares		153	5,211 00
"	" T. W. Crowell's ac.		153	577 30
"	" p'p'ty 2nd & Callowhill		153	14,220 17
"	" ⅛ interest in p'p'ty of Ziner		153	209 57
"	" p'p'ty in West Phila.		153	4,221 72
"	" factory ac.		153	10,764 35
"	" L. Rheinstein's ac.		153	16 55
"	" A. Schauffeer's ac.		153	37 50
"	" Ch's Beck's ac.		153	400 00
"	" Phil. & South. Mail Steamship Co.		153	700 00
"	" Lloyd Logan's ac.		153	494 75
"	" T. H. Rettew's ac.		153	679 00
"	" Preston Coal & Imp. —		153	9,000 00
"	" W. B. Warne's ac.		153	25 00
"	" S. Haws' ac.		153	115 10
"	" John Sensendersser		153	323 11
"	" B. T. Vetterlein		153	12,270 50
"	" H. G. Vetterlein		153	902 37
"	" cash		146	27,838 63
				$131,083 71

EXHIBIT 14—Continued. (Ledger

DR.

1870.				
Jan'y 1	To bills rec'ble, Noassy's N., due June 4, '70		160	$200 00
"	" J. D. Lower's N., due Nov. 29, '70		160	128 94
"	" Chr. Mann's ac.		160	55 32
"	" T. J. Dumis' ac.		160	159 00
"	" Geo. Cathrall's ac.		160	321 08
"	" A. H. Theobald's ac.		160	3,260 37
"	" H. Wehl's ac.		160	626 41
"	" W. C. Edwards' ac.		160	93 73
March 11	" bills receivable, L B. Grim's N., due June 15		164	1,000 00
" 31	" profit & loss ac., do. Dec'r 31, '69		164	2,379 94
" "	" ditto B. T. V.'s part		164	713 98
May 1	" Lloyd Logan's ac. & cr., 2,569		166	1,154 97
Nov. 30	" Sam'l Harrison & S.		171	284 38
"	" Jos. Cressman		171	3,137 68

ger 7, p. 272.) The. H. Vetterlein.

Cr.

1869.			
July 6	By balance		$150,345 05
Dec'r 31	" interest on ac.	148	3,066 52
"	" Th. H. & H. V. & Co. ac.	154	4,334 04
"	" Th. H. V. & Son's ac.	154	14,759 34
"	" P. Callay's ac.	154	2 10
"	" W. Salamon's ac.	154	3,014 68
	$175,521 73		
	131,083 71		
	$44,438 02		
			$175,521 73

7, p. 273. Th. H. Vetterlein.

Cr.

1870.			
Jan'y 1	By amount cr. over fr.		$44,438 02
"	" bills payable, 3 notes given to Wilbraham	161	6,650 00
"	" T. W. Carroll's ac.	161	27 19
"	" Chr. Weyman's ac.	161	1,700 00
"	" W. Scheurer's ac.	161	2,226 00
"	" C. Boschen's ac.	161	763 43
"	" Tul. Vetterlein's ac.	161	107 43
"	" A. H. Motzest's ac.	161	5,812 50
March 11	" bills receivable, L. B. Grim's N., due June 15	164	1,000 00
Nov. 30	" interest on ac.	170	2,924 80

1869.				
July	7–31	To cash	8	$1,351 21
August	5	" segars	9	5 20
"	17	" ditto	10	5 00
"	24	" cash tax on property in Beverly	13	17 40
"	1–31	" cash	13	1,081 89
Septemb'r	25	" segars	17	6 50
"	30	" cash	22	1,435 36
October	2	" ditto to W. T. Kirk	29	66 07
"	8	" ditto to Lauber.	29	23 09
"	9	" ditto to Norcross	29	72 70
"	19	" ditto to Haflich	29	140 59
"	20	" ditto	29	20 00
"	30	" ditto	29	505 49
November	6	" ditto to Thompson	36	45 00
"	30	" ditto to I. R.	36	855 60
"	"	" ditto to do.	36	1,500 00
"	"	" ditto	36	1,029 81
December	2	" segars	39	7 00
"	8	" ditto	39	3 50
"	2	" cash tax on ground in Beverly, N. J.	48	19 00
"	28	" ditto tax on p'p'ty. No. 331 N. 2nd St.	49	278 11
"	"	" ditto tax on p'p'ty. on Lexington Ave.	49	185 36
"	"	" ditto tax on p'p'ty. on No. 254 W. 19th	49	421 25
"	"	" ditto loan of Keller	49	9 75
"	1-31	" ditto	49	939 61
"	31	" balance		39,514 16
				$49,538 65

terlein & Co. Ledger I, page 2.)

1869.				
July	7	By mdse. on hand this date	2	$30,526 22
"	"	" store fixtures	2	600 00
"	"	" cash	7	5,000 00
Septemb'r	20	" ditto ¼ rent for store 331 N. 2d St.	20	450 00
December	1	" ditto on acc't of house in Titsford	45	100 00
"	"	" ditto rent for ground in Beverly, N. J.	45	20 00
"	17	" ditto house in Frankford	46	830 90
"	18	" ditto ¼ rent for store 331 N. 2d St.	46	450 00
"	31	" ditto	47	81
"	"	" interest on account up to date	50	959 65
"	"	" mdse. on hand this day	44	990 07
"	"	" 50 shares Union Bank'g C'y stock, 4 instalments	44	2,000 00
"	"	" Th. H. Peters Life Ins.	44	2,400 00
"	"	" 212 shares Mrs. J. B. M. & C. Tobacco Man'f'tg C'y	44	5,211 00
				$49,538 65

105 COMPLAINANT'S EXHIBIT 17. Profit

DR.

1869.					
July	31	To cash		125	$21 12
"	"	" sundries		125	62 67
August	"	" cash		129	23 82
"	1-31	" sundries		129	197 85
Sept.	1-30	" cash		134	36 67
"	"	" sundries		133	58 41
October	"	" cash		138	9 15
"	"	" sundries		137	35 02
Nov'r	5	" cash		143	32 00
"	10	" ditto on Charles Reyman's interest acc't		143	28 82
Nov'r	27	" interest on Albrecht's		144	57 37
Dec'r	1-31	" sundries		148	12,847 58
"	31	" loss on 200 shares N. K. & Md. f'l'd coal stock		153	725 00
"	"	" cash		146	1,947 95
					$16,083 43
1870.					
Jan'y	1	To balance			$5,248 95
"	"	" sundries		159	48 30
Feb'y	12	" cash interest		162	2 57
"	"	" sundries		162	17 18
"	29	" ditto		162	9 00
April	18	" cash		165	30 60
Nov.	30	" sundries		170	9,710 30
			$9,710 30		
			15,066 90		

and loss account, ledger No. 7.

CR.

1869.				
July	31	By cash	123	$0 83
"	"	" sundries	125	5 75
Aug.	"	" cash	127	2 17
"	"	" sundries	130	16 26
Sept.	1–30	" cash	133	4 98
"	"	" sundries	135	99 23
Oct.	31	" cash	137	1 00
"	"	" sundries	137	46 37
Nov.	3	" cash	142	1 25
"	25	" interest on $950.44, 4 years 144 days	144	251 06
Nov'r	25	" ditto on Dannenhower's	144	77 67
"	30	" ditto on Weisser's acc't	143	4 74
Dec'r	1–31	" sundries	148	10,323 22
"	"	" balance		5,248 95
				$16,083 43
1870.				
Feb'ry	29	By sundries	163	$566 13
March	31	" ditto	164	4,759 87
May	1	" Lloyd Logan acc't and interest	166	381 24
June	31	" Sam. Harrison acc't	167	144 23
Aug.	12	" H. Weleg & Bro., int.	168	2 35
Nov'r	30	" sundries	171	5,642 35
		$5,642 35		
		Cash, 11,496 17		1,947 95

106 COMPLAINANT'S EXHIBIT 18. (Journal X of Vetterlein & Co., page 120.) July, 1869.

22	6	Mdse. ac., Dr.		
33		To profit & loss ac., balance of the former ac.--	$19,452	43
33	6	Profit & loss ac., Dr.		
		To expenses ac., balance of the latter ac----	$1,373	32
	6	Sundry Drs.		
33		To profit & loss ac.—		
272		Th. H. Vetterlein, 50% of $106,108.73------	$53,054	36
275		Th. J. Vetterlein, 15% of $106,108.73-------	15,916	31
276		B. T. Vetterlein, 15% of $106,108.73-------	15,916	31
271		Chs. Meurer, 20% of $106,108.73----------	21,221	75
			$106,108	73

July 7, 1869.

272	Th. H. Vetterlein, Dr.		
16	To stock ac., mdse. on hand this day-------	$30,526	22
272	Th. H. Vetterlein, Dr.		
465	To fixtures ac., fixtures-------------------	600	00

107 COMPLAINANT'S EXHIBIT 20. Vetterlein & Co. Journal X, page 164. March, 1870.

273	11	Th. H. Vetterlein, Dr.		
		To bills rec'v'ble, L. B. Grim's note, due June 15----------	$1,000	00
433	18	J. K. Taylor, Dr.		
37		To cash ac. ----------	1,250	00
133	11	Bills rec'v'ble, Dr.		
273		To Th. H. Vetterlein, L. B. Grim's note, due June 15----------	1,000	00
		Sundry Drs.		
33		To profit and loss ac.—		
273		Th. H. Vetterlein, 50% of $4,759.87---------	$2,379	94
273		Th. H. Vetterlein, B. T. Vetterlein, 15% of $4,759.87----------	713	98
448		Th. J. Vetterlein, 15% of $4,759.87----------	713	98
271		Chs. A. Meurer, 20% of $4,759.87----------	915	97
			$4,759	87

108 COMPLAINANT'S EXHIBIT 22. Vetterlein & Co. Journal I, page 209. Dec'b'r 1, 1870.

3 Theo. H. Vetterlein, Dr.
4 To Th. J. Vetterlein, for expenses in Europe on ac. of Th. H. V. & Sons & Th. H. V., individual---- $1,479 55

1.

3 Th. H. Vetterlein, Dr.
6 To H. G. Vetterlein, for services ---- 1,123 17

21.

3 Th. H. Vetterlein, Dr.
6 To B. T. Vetterlein to balance his ac. ---- 13,118 30

1.

3 T. H. Vetterlein & Sons, Drs.
19 By T. H. Vetterlein, for expenses in Europe on ac. Th. H. V. & Sons & Th. H. V., individual---- 1,479 55

21.

84 James W. Crowell, Dr.
60 To real estate ac., 21 days' rent @ 1,100 ---- 37 64

20.

65 W. C. Edwards.
3 To Th. H. Vetterlein, for sale of property ---- 36 69

COMPLAINANT'S EXHIBIT 23. (Vetterlein & Co. Journal X, page 167.) June, 1870.

Cash ac., Dr.

448 7 To L. B. Grim—
37 Cash, ⅛ of $7,678.61---- $959 82
169 30 Sam Harrison & Son, Drs.
33 To profit and loss ac. ---- 144 23
Interest on ac.

July, 1870.

Sundry Drs.

36 To cash ac.—
63 5 Real estate ac., interest on mortgage---- $120 00
433 13 J. K. Taylor, life insurance---- 60 89
433 27 Ditto, ditto, ---- 19 93

$200 82

109 *Opinion.*

United States District Court, S. D. of New York.

DEMAS BARNES, as Assignee, &c.,
vs.
THEODORE H. VETTERLEIN and Others.

James K. Hill, for plaintiff; T. M. Tyng, for Etna Ins. Co.; B. E. Valentine, for defendant Vetterlein.

BROWN, *J.:*

This is an action to set aside a voluntary conveyance or assignment made by Theodore H. Vetterlein, one of the bankrupts, to Bernard T. Vetterlein, the other bankrupt, and to one Theodore J. Vetterlein, in trust for the benefit of the wife and children of Theodore H. Vetterlein. Bernhard T. Vetterlein and Theodore J. Vetterlein are both sons of Theodore H. Vetterlein.

The assignment is dated the 18th day of July, 1870, and the petition under which Theodore H. and Bernhard T. Vetterlein were adjudged bankrupts was filed December 28, 1870.

The assignment sought to be set aside is of two policies of insurance on the life of one J. Kinsey Taylor for the aggregate sum of $10,000, which had been assigned to Theodore H. Vetterlein by Taylor in trust for the firm of Vetterlein & Co., to whom Taylor was indebted, and as collateral security for their claim.

In July, 1869, Mr. Meurer, one of the firm, withdrew from the firm of Vetterlein & Co., and on December 31, 1869, Theodore J. Vetterlein withdrew from the firm, and the business was continued by Theodore H. Vetterlein and Bernhard T. Vetterlein in the same firm name up to the time of the bankruptcy proceedings.

From all the testimony in this case I am satisfied that neither Mr. Meurer nor Theodore J. Vetterlein had, at the time of the last assignment of the policies (18th July, 1870), any valuable pecuniary interest in the assets of the two former firms, and that the last firm, consisting of Theodore H. and Bernhard T. Vetterlein, became legally vested with all the remaining assets of the prior firms, and thereby was entitled to the entire beneficial interest in the policies of insurance held by Theodore H. Vetterlein as collateral security for the debt of Taylor. The assignment of these policies of insurance by Theodore H. Vetterlein to his sons in trust for their mother, being the assignment of a collateral security held for a debt due to the firm, was clearly not made in the ordinary course of business, and therefore was presumptively fraudulent under sec. 5129 of the Revised Statutes.

110 Some two months before the assignment by Theodore H., in May, 1870, the firm applied to their creditors for an extension of credit. This of itself is a virtual admission of the strongest character of their inability at that time to pay their debts as they matured. In less than six months after the assignment of the policies of insurance the firm made an assignment of all their assets to an assignee in trust for the payment of their debts. These assets

were shortly afterwards turned over to the assignee in bankruptcy, who has been able to realize from them only the gross sum of $112,957, while the debts proved in bankruptcy amount to $351,000. No losses of any considerable amount are proved between July, when the assignment of the policies was made, and the December following, when the general assignment and bankruptcy took place. The defendants allege that there has been great loss and waste in the collection of the assets. It is not necessary to examine this charge in detail, for in no case can it be held to account for the large deficiency between the debts proved and the gross assets collected.

From these facts, as well as the extension of credit procured the May previous, I am compelled to find that the firm was at the time in embarrassed circumstances, and was probably actually insolvent. The transfer of the policies, which were the property of the firm, by Theodore H. to his two sons in trust for the benefit of their mother and children were, under the circumstances, a wholly unauthorized and invalid transfer as against the creditors of the firm. (Sedgwick *v.* Place, 12 Blatch., 163.)

So far as appears it was purely voluntary, and is fraudulent in law as against the firm creditors. It must, therefore, be declared null and void as against the assignee in bankruptcy, and the proceeds which, during the pendency of the suit, have been deposited in the trust company must be adjudged to belong to the plaintiff and to be accounted for in the bankruptcy proceedings.

A decree may be entered in accordance herewith.

Dec. 30, 1882.

ADDISON BROWN.

111 *Decree.*

At a stated term of the district court of the United States for the southern district of New York, held at the court-rooms thereof, in the city of New York, on the 16th day of January, 1883.

Present: Hon. Addison Brown, district judge.

DEMAS BARNES, as Assignee in Bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein, Complainant,

vs.

THEODORE H. VETTERLEIN, BERNHARD T. VETTERLEIN, THEODORE J. Vetterlein, Ætna Life Insurance Company, North America Life Insurance Company, New York Life Insurance Company, and Equitable Life Assurance Society, Defendants.

This cause coming on to be heard upon the bill of complaint herein, the answer of Theodore J. Vetterlein and Bernhard T. Vetterlein, and the answer of Theodore H. Vetterlein, and the replication of the complainant to the said answers, and the petition of James A. Courtney, Theodore H. Woodward, Marcellus E. McDowell, Jacob Duncan, David C. McCannon, Archimedes I. Buckner, Jr., William Henry Nassau, Raphael Teller, Meyer Anathon, Solomon Teller, David Teller, Herman Schmidt, and Garvin H. Woodward and Charles H. Roberts, assignees in bankruptcy of David C. McCannon and Archimedes I. Buckner, Jr., and the separate an-

swers to the said petition of John Sedgwick, the special receiver therein, and the complainant, and the proof, oral, documentary, and written, taken and filed in said cause, and having been argued by T. Mitchell Tyng, Esq., of counsel for the defendants, Bernhard T. Vetterlein and Theodore H. Vetterlein, and also for Theodore J. Vetterlein as trustee, and B. E. Valentine, Esq., of counsel for the defendant, Theodore J. Vetterlein individually, and Matthew L. Harney, Esq., of counsel for the said petitioners, James A. Courtney and others, and James K. Hill, Esq., of counsel for the complainant:

Now, therefore, on consideration thereof, it is ordered, adjudged, and decreed that the assignment from Theodore H. Vetterlein to Theodore J. Vetterlein and Bernhard T. Vetterlein of three policies of insurance on the life of J. Kinsey Taylor, namely, one
112 for $4,000, issued by the New York Life Insurance Company; one for $2,000, issued by the Ætna Life Insurance Company, and one for $4,000, issued by the North America Life Insurance Company, and made on or about the 18th day of July, 1870, is, as against the complainant herein, fraudulent and void, and that the right to collect the amount of said policies was vested in the complainant at the time of the commencement of this action.

And it is further ordered, adjudged, and decreed that the United States Trust Company pay over to the complainant herein, or to James K. Hill, his solicitor, all moneys deposited by John Sedgwick, Esq., the special receiver herein in this action, or to the credit thereof, together with all accrued interest thereon, less any sums which may have been heretofore paid under the orders of this court.

And it is further ordered, adjudged, and decreed that the complainant, Demas Barnes, as assignee in bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein, do recover from the defendants, Theodore H. Vetterlein, Bernhard T. Vetterlein, and Theodore J. Vetterlein, the sum of two hundred and thirty-five and $\frac{45}{100}$ dollars costs, as taxed by the clerk of this court, and that he have exetion therefor.

ADDISON BROWN.

113 U. S. District Court, Southern District of New York.

DEMAS BARNES, as Assignee, &c., Complainant, Appellee,
against
THEODORE H. VETTERLEIN, THEODORE J. VETTERLEIN, and BERNHARD T. VETTERLEIN, Defendants, Appellants.

SIR: Please take notice that the three defendants above named hereby appeal to the circuit court of the United States for the second circuit from the final decree entered and filed in this cause on the 16th day of January, 1883.

Dated New York, January 16th, 1883.

T. M. TYNG,
61 *Wall St., New York, Sol'c'r for Appellants.*

To James K. Hill, sol'c'r for complainant and appellee, and to Samuel H. Lyman, clerk, &c.

Service of a copy of the within admitted this 16th January, 1883
JAS. K. HILL,
Sol'c'r for Complainant.

114 United States District Court, Southern District of New York.

DEMAS BARNES, as Assignee, Complainant, Appellee,
ag'st
THEODORE H. VETTERLEIN, THEODORE J. VETTERLEIN, and BERNHARD T. VETTERLEIN, Impleaded, Defendants, Appellants.

To the honorable the circuit court of the United States for the southern district of New York:

The appeal of the above-named Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernhard T. Vetterlein, defendants and appellants, respectfully showeth—

That upon the 10th day of August, 1871, the above-named complainant filed his bill in equity in the United States district court for the southern district of New York against the above-named defendants and others, and that the substance of the averments of the said bill was as follows:

1. That the complainant was, on the 1st March, 1871, duly appointed, and now is, assignee in bankruptcy of the defendants, Theodore H. Vetterlein and Bernhard T. Vetterlein, who were duly adjudicated such bankrupts in the southern district of New York.

2. That on or about the 6th July, 1867, the said bankrupts became the owners of certain policies of life insurance upon the life of one J. Kinzey Taylor.

3. That on or about the 18th of July, 1870, the said bankrupts assigned the said policies to the defendants, Theodore J. Vetterlein and Bernhard T. Vetterlein, in trust for the wife and children of the said Theodore H. Vetterlein.

4. That the said assignment was made within six months before the filing of the petition on which the said adjudication in bankruptcy was made; that such assignment was not made in the usual and ordinary course of business of said bankrupts; that the said assignment was void under section 5129, Revised Statutes of the United States, and that the same was made in fraud of creditors of said bankrupts.

That subpœnas were duly issued to the above-named defendants, who caused their appearance to be duly entered, and, on the 6th and 7th days of September, 1871, the answers of said defendants to said bill were duly filed.

115 That in and by their said answers the defendants admitted that the defendants, Theodore H. Vetterlein and Bernard T. Vetterlein, were duly adjudged bankrupts, as in said bill averred, and that the complainant was duly appointed their assignee, &c.; but they denied that the policies of insurance mentioned in the pleadings or the proceeds thereof ever were the property of said bankrupts or either of them, or that any title thereto or interest therein ever passed to the complainant as their assignee. They admitted that the true and lawful owners of said policies of insurance

duly assigned the same and the proceeds thereof to the defendants, Theodore J. Vetterlein and Bernhard T. Vetterlein in trust for the wife and children of the defendant, Theodore H. Vetterlein, but they denied that such assignment was made out of the due and orderly course of business of the owners of said policies, or that the same was in any sense fraudulent under section 5129 of the Revised Statutes of the United States or otherwise.

That replications to the said answers were duly filed on the 26th September, 1871, and on the 16th October, 1871, an order was duly made appointing Henry Wilder Allen, Esq., special examiner, before whom certain oral testimony was taken and by whom the same was duly filed, pursuant to rule 67 of the Supreme Court of the United States, in equity.

That the cause came on for final hearing before the Hon. Addison Brown, district judge, in the month of May, 1882, and on the 16th day of January, 1883, a final decree was made, pronounced, and filed in the cause wherein it was in substance adjudged and decreed—

1. That the aforesaid assignment of said policies of insurance and the proceeds thereof was, as against the complainant therein, fraudulent and void, and that the right to collect the amount of said policies was vested in the complainant at the time of commencement of this action.

2. That the United States Trust Company pay over to the complainant, &c., all money deposited by John Sedwick, the special receiver herein in this action, or the credit thereof.

3. That the complainant recover from the defendants Vetterlein the sum of $235.45 costs, as taxed, and that he have execution therefor.

And these appellants are advised and insist that the said decree is in all things erroneous, and that, upon the proofs in this cause legally made and filed, said defendants are entitled to a decree dismissing the complainant's bill of complaint herein, with costs.

And these appellants intend on this appeal to seek a new decision of the facts and a decree dismissing the said bill of complaint.

116 Wherefore these appellants appeal from the said decree of the said district court and from each and every part thereof to the next circuit court to be held in said district, and respectfully pray that the said circuit court may receive, hear, and determine such appeal and render its decision, on the facts as well as the law, upon the pleadings and proofs now on file in the said district court; and they pray that the record and proceedings of said district court may be returned to the said circuit court, and that the said decree and every part thereof may be reversed, with costs, and that such other decree be made thereupon as to the said circuit court shall seem just, and that the appellee aforesaid be condemned to pay to these defendants their costs and damages in the premises.

Dated New York, January 22, 1883.

T. M. TYNG,

61 *Wall Street, Solicitor for Appellants.*

(Endorsed:) Service of a copy of the within appeal admitted this 26th day of January, 1883. Jas. K. Hill, solicitor for complainant.

117 *Bond on Appeal.*

Know all men by these presents that we, Erastus Crawford, No. 220 West 28th street, New York city, and Anson O. Stevens, No. 149 West 41st street, in the city of New York, are held and firmly bound unto Demas Barnes, as assignee, etc., of Theodore H. and Bernhard T. Vetterlein, bankrupts, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Demas Barnes, assignee, etc., as aforesaid, his executors, administrators, successors, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals; dated the 23d day of January, 1883.

Whereas Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernhard T. Vetterlein have taken an appeal to the circuit court of the United States for the southern district of New York, in the second circuit, from a decree of the district court of the United States for said southern district of New York, bearing date the 16th day of January, 1883, in a suit in which the said Demas Barnes, as assignee, etc., as aforesaid, is complainant and the said Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernhard T. Vetterlein are defendants:

Now the condition of this obligation is such that if the above-named appellants shall prosecute said appeal to effect and pay all costs and damages which shall be awarded against them as such appellants if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall remain in full force and effect.

ERASTUS CRAWFORD. [L. S.]
ANSON O. STEVENS. [L. S.]

Sealed and delivered in presence of—
MATTHEW L. HARNEY.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Erastus Crawford and Anson O. Stevens, being duly sworn, depose and say, and each for himself deposes and says, that he resides within the southern district of New York and is worth the sum of two thousand dollars over and above his just debts and liabilities, exclusive of property exempt from execution.

ERASTUS CRAWFORD.
ANSON O. STEVENS.

Sworn to before me this 25th day of January, 1883.
[SEAL.] MATTHEW L. HARNEY,
Notary Public, City and County of New York.

118 (Endorsement.)

Within bond approved as to form, amount, and sufficiency January 26th, 1883.

A. B.

Please take notice that the within is a copy of a bond on appeal this day approved and filed in the office of the clerk of the district court of the United States for the southern district of New York.

Dated January 26th, 1883.

T. M. TYNG,
61 *Wall Street, New York, Sol'c'r for Appellants.*

To James K. Hill, Esq., 45 William St., New York, sol'c'r for appellees.

Service of a copy of the within bond and notice admitted this 26th day of January, 1883.

JAS. K. HILL,
Compl't's Solicitor.

119 *Citation.*

By the Honorable Addison Brown, one of the judges of the circuit court of the United States for the southern district of New York.

To Demas Barnes, as assignee in bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein.

Whereas Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernhard T. Vetterlein have lately appealed to the next circuit court of the United States held in the southern district of New York from a decree lately and on the 16th day of January, 1883, rendered in the district court of the United States for said district, made in favor of you, the said Demas Barnes, assignee as aforesaid, and have filed the security required by law to stay all proceedings for the enforcement of said decree pending the hearing and determination of said appeal, you are hereby cited to appear before the said circuit court, at the city of New York, on the first Monday of April next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 26th day of January, in the year of our Lord one thousand eight hundred and eighty-three.

ADDISON BROWN,
Judge of District Court, Southern District of New York.

Endorsements.

Allowed. A. B.

Please take notice that the citation, of which the within is a copy, was this day signed and filed in the office of the clerk of the district court of the United States for the southern district of New York.

Dated January 26, 1883.

T. M. TYNG,
61 *Wall St., N. Y., Solicitor for Appellants.*

To Jas. K. Hill, Esq., 45 William St., N. Y., solicitor for appellee.

Service of a copy of the within citation and notice admitted this 26th day of January, 1883.

JAS. K. HILL,
Complainant's Solicitor.

120 United States Circuit Court.

DEMAS BARNES, Appellee,
ag'st
THEO. H. VETTERTEIN, &c., Appellants.

WALLACE, *J.:*

The proofs show satisfactorily that Theodore H. Vetterlein was in contemplation of insolvency at the time he assigned the policies of insurance upon the life of Taylor, and that the assignment of the policies for the benefit of his wife and children was purely voluntary and presumptively fraudulent under sec. 5129 of the Revised Statutes. The proofs also show that these policies had become the assets of the firm composed of Theodore H. Vetterlein and Bernhard T. Vetterlein, and neither Mr. Meurer nor Theodore J. Vetterlein has any real interest in them.

If the policies had been assigned by the firm the bill would
121 be defective in omitting to allege the insolvency or contemplation of insolvency of the firm at the time, but it was entirely competent for the members of the firm, as between themselves, to make such disposition of the firm property as they saw fit. They did see fit to treat these policies as belonging to Theodore H. Vetterlein by permitting him to transfer them as his own in trust for the benefit of his wife and children.

There is no merit in the objections urged to the decree of the district court, and the conclusions of the learned district judge are approved.

The decree is affirmed with costs.

Filed June 6, 1883.

122 At a stated term of the United States circuit court for the southern district of New York, held at the court-rooms thereof, in the city of New York, on the — day of October, 1883.

Present: Hon. William J. Wallace, circuit judge.

DEMAS BARNES, as Assignee in Bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein,
vs.
THEODORE H. VETTERLEIN, BERNHARD T. VETTERLEIN, THEODORE J. Vetterlein, Ætna Life Insurance Company, North America Life Insurance Company, New York Life Insurance Company, and Equitable Life Assurance Society.

The defendants, Theodore H. Vetterlein, Bernhard T. Vetterlein, and Theodore J. Vetterlein, having appealed to this court
123 from the final decree entered herein in the office of the clerk of the district court of the United States for the southern district of New York, on the 16th day of January, 1883, and the said

appeal having been argued by T. M. Tyng, Esq., of counsel for the said defendants and appellants, and James K. Hill, of counsel for the complainant and appellee, before Hon. William J. Wallace, circuit judge, who decided that said final decree should be affirmed with costs:

Now, on motion of James K. Hill, solicitor for the complainant and appellee, it is ordered, adjudged, and decreed that said final decree so appealed from be, and the same is hereby, in all respects affirmed.

And it is further ordered, adjudged, and decreed that the assignment from Theodore H. Vetterlein to Theodore J. Vetterlein and Bernhard T. Vetterlein of three policies of insurance on the life of J.
124 Kinzey Taylor, namely, one for $4,000, issued by the New York Life Insurance Company; one for $2,000, issued by the Ætna Life Insurance Company, and one for $4,000, issued by the North America Life Insurance Company, and made on or about the 18th day of July, 1870, is, as against the complainant herein, fraudulent and void, and that the right to collect the amount of said policies was vested in the complainant at the time of the commencement of this action.

And it is further ordered, adjudged, and decreed that the United States Trust Company pay over to the complainant and appellee herein or to James K. Hill, his solicitor, all moneys deposited by John Sedgwick, Esq., the special receiver herein in this action, or to credit thereof, together with all accrued interest thereon, less
125 any sums which may have been heretofore paid under the orders of the court.

And it is further ordered, adjudged, and decreed that the complainant and appellee, Demas Barnes, as assignee in bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein, do recover from the defendants and appellants, Theodore H. Vetterlein, Bernhard T. Vetterlein, and Theodore J. Vetterlein, the sum of thirty-seven & $\frac{51}{100}$ dollars costs, as taxed by the clerk of this court, together with the sum of two hundred and thirty-five & $\frac{45}{100}$ dollars allowed by the said final decree so appealed from, aggregating in all the sum of two hundred and seventy-two and $\frac{96}{100}$ dollars, together with interest on said sum of $235.45 from January 16, 1883, and that he have execution therefor.

WM. J. WALLACE.

(Endorsed:) U. S. circuit court. Filed Oct. 5th, 1883. Timothy Griffith, clerk.

126 United States Circuit Court, Southern District of New York.

DEMAS BARNES, as Assignee, &c., Appellee,
ag'st
THEODORE H. VETTERLEIN & *als.*, Appellants.

We hereby consent that the foregoing papers shall constitute the record to be sent to the United States Supreme Court by the clerk of this court on the appeal to said Supreme Court in the above-entitled cause.

Dated New York, Sept. 30, 1884.

JAS. K. HILL,
For Appellee.
T. M. TYNG,
For Appellants.

Endorsed: U. S. circuit court. Filed Oct. 2nd, 1884.

127 United States Circuit Court, Southern District of New York.

DEMAS BARNES, as Assignee, Complainant, Appellee,
ag'st
THEODORE H. VETTERLEIN, THEODORE J. VETTERLEIN and BERNARD T. VETTERLEIN, Impleaded, Defendants, Appellants.

To the honorable "Supreme Court of the United States:"

The appeal of the above-named Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernhard T. Vetterlein, defendants and appellants, respectfully showeth:

That upon the 10th day of August, 1871, the above-named complainant filed his bill in equity in the United States district court for the southern district of New York against the above-named defendants and others, and that the substance of the averments of the said bill was as follows:

1. That the complainant was, on the 1st of March, 1871, duly appointed, and now is, assignee in bankruptcy of the defendants, Theodore H. Vetterlein and Bernhard T. Vetterlein, individually and as composing the firm of Vetterlein & Co., who were duly adjudicated such bankrupts in the southern district of New York.

2. That on or about the 6th of July, 1867, the said firm of Vetterlein & Co. became the owners of certain policies of life insurance upon the life of one J. Kinzie Taylor.

128 3. That on or about the 18th of July, 1870, the said firm assigned the said policies to the defendants, Theodore J. Vetterlein and Bernhard T. Vetterlein, in trust for the wife and children of the said Theodore H. Vetterlein.

4. That the said assignment was made within six months before the filing of the petition on which the said adjudication in bankruptcy was made; that such assignment was not made in the usual and ordinary course of business of said firm; that the said assignment was void under section 5129, Revised Statutes of the United States, and that the same was made in fraud of creditors of said firm of Vetterlein & Co.

That subpœnas were duly issued to the above-named defendants, who caused their appearance to be duly entered, and, on the 6th and 7th days of September, 1871, the answers of said defendants to said bill were duly filed.

That in and by their said answers the defendants admitted that the defendants, Theodore H. Vetterlein and Bernard T. Vetterlein, were duly adjudged bankrupts as in said bill averred, and that the complainant was duly appointed their assignee, &c.; but they denied that the policies of insurance mentioned in the pleadings or the proceeds thereof ever were the property of said bankrupt firm or of said bankrupts, or that any title thereto or interest therein ever passed to the complainant as their assignee. They admitted that the true and lawful owners of said policies of insurance, to wit, a former and perfectly solvent firm of Vetterlein & Co., composed of these three defendants and one Charles A. Meurer, duly as-
129 signed or caused to be assigned the same and the proceeds thereof to the defendants, Theodore J. Vetterlein and Bernhard T. Vetterlein, in trust for the wife and children of the defendant, Theodore H. Vetterlein, but they denied that such assignment was made out of the due and orderly course of business of the said owners of said policies, or that the same was in any sense fraudulent under section 5129 of the Revised Statutes of the United States, or otherwise.

That replications to the said answers were duly filed on the 26th September, 1871, and on the 16th October, 1871, an order was duly made appointing Henry Wilder Allen, Esq., special examiner, before whom certain oral testimony was taken, and by whom the same was filed, pursuant to rule 67 of the Supreme Court of the United States, in equity.

That the cause came on for final hearing before the Hon. Addison Brown, district judge, in the month of May, 1882, and on the 16th day of January, 1883, a final decree was made, pronounced, and filed in the cause wherein it was, in substance, adjudged and decreed—

1. That the aforesaid assignments of said policies of insurance and the proceeds thereof was, as against the complainant therein, fraudulent and void, and that the right to collect the amount of said policies was vested in the complainant at the time of commencement of this action.

2. That the United States Trust Company pay over to the complainant, &c., all money deposited by John Sedgwick, the
130 special receiver herein, in this action or to the credit thereof.

3. That the complainant recover from the appellants the sum of $235.45 costs as taxed, and that he have execution therefor.

That an appeal from the said decree was duly taken to the circuit court of the United States next held in the said southern district, and the same was argued at a term of said court held in the city of New York, before the Hon. William J. Wallace, circuit judge.

That on the fifth day of October, 1883, a decree of the said circuit court was duly made and enrolled, wherein and whereby it was adjudged and decreed in conformity with the aforesaid decree of the

district court, and wherein and whereby it was adjudged and decreed that the decree of the district court be affirmed.

And these appellants are advised and insist that the said decrees are in all things erroneous, and that upon the pleadings and upon the proofs in this cause said defendants are entitled to a decree dismissing the complainant's bill of complaint herein, with costs.

And these appellants intend on this appeal to seek a new decision of the facts and a decree dismissing the said bill of complaint.

Wherefore these appellants appeal from the said decree of the said district and circuit courts, and from each and every part thereof, to the Supreme Court of the United States, and respectfully pray that the said Supreme Court may receive, hear, and determine such appeal, and render its decision on the facts as well as the law upon the pleadings and proofs now on file in the said circuit court;
131 and they pray that the record and proceedings of said circuit court may be returned to the Supreme Court, and that the said decrees and every part thereof may be reversed with costs, and that such other decree be made thereupon as to the Supreme Court shall seem just, and that the appellee aforesaid be condemned to pay to these defendants their costs and damages in the premises.

Dated New York, October 11th, 1883.

T. M. TYNG,
Solicitor for Appellants.

(Endorsed:) Allowed this 15th day of October, 1883. Wm. J. Wallace.

132 [Endorsed:] U. S. circuit court, southern district of New York. Demas Barnes, as assignee, against Theodore H. Vetterlein and others. (Copy.) Petition on appeal. T. M. Tyng, sol'r for appellants, 61 Wall St., N. Y. city. Allowed this 15th day of October, 1883. Wm. J. Wallace. U. S. circuit court. Filed Oct. 15, 1883. Timothy Griffith, cl'k.

133 *Bond on Appeal.*

Know all men by these presents that we, Erastus Crawford, of number 220 West 28th street, and Anson O. Stevens, of number 149 West 41st street, in the city of New York, are held and firmly bound unto Demas Barnes, as assignee, etc., of Theodore H. and Bernhard T. Vetterlein, bankrupts, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Demas Barnes, assignee, etc., as aforesaid, his executors, administrators, successors, or assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals; dated the 11th day of October, 1883.

Whereas Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernhard T. Vetterlein have taken an appeal to the Supreme Court of the United States from decrees of the district and circuit courts of the United States for said southern district of New York, bearing date the 16th day of January, 1883, and the fifth day of October, 1883, respectively, in a suit in which the said Demas Barnes, as as-

signee, etc., as aforesaid, is complainant and the said Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernard T. Vetterlein are defendants, now the condition of this obligation is such that if the above-named appellants shall prosecute said appeal to effect and pay all costs and damages which shall be awarded against them as such appellants if they fail to make said appeal good, then
134 this obligation shall be void; otherwise the same shall remain in full force and effect.

ERASTUS CRAWFORD. [SEAL.]
ANSON O. STEVENS. [SEAL.]

Sealed and delivered in presence of—
SEWALL SERGEANT.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

Erastus Crawford, being duly sworn, deposes and says that he resides within the southern district of New York and is worth the sum of two thousand dollars over and above his just debts and liabilities, exclusive of property exempt from execution.

ERASTUS CRAWFORD.

Sworn to before me this 11th day of October, 1883.
[SEAL.] SEWALL SERGEANT,
Notary Public, City and County of New York.

UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

Anson O. Stevens, being duly sworn, deposes and says that he resides within the southern district of New York and is worth the sum of two thousand dollars over and above his just debts and liabilities, exclusive of property exempt from execution.

Sworn to before me this 12th day of October, 1883.
[SEAL.] SEWALL SERGEANT,
Notary Public, City and County of New York.

135 (Endorsed:) Approved this 15th day of October, 1883. Wm. J. Wallace.

136 [Endorsed:] U. S. circuit court, southern district of New York. Demas Barnes, as assignee, against Theodore H. Vetterlein and others. (Copy.) Bond on appeal. T. M. Tyng, sol'r for appellants, 61 Wall street, N. Y. city. Approved this 15th day of October, 1883. Wm. J. Wallace. U. S. circuit court. Filed Oct. 15, 1883. Timothy Griffith, clerk.

137 *Citation.*

By the Honorable William J. Wallace, circuit judge United States circuit court, southern district of New York.

To Demas Barnes, as assignee in bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein:

Whereas Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernhard T. Vetterlein have lately appealed to the Supreme Court

of the United States from a decree lately and on the fifth October, 1883, rendered in the circuit court of the United States for the southern district of New York, made in favor of you, the said Demas Barnes, as assignee as aforesaid, and have filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the second Monday of October, in the year 1884, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the 15th day of October, in the year of our Lord one thousand eight hundred and eighty-three.

WM. J. WALLACE,
Circuit Judge.

(Endorsed:) Allowed this 15th day of October, 1883 Wm. J. Wallace.

138 [Endorsed:] U. S. circuit court, southern district of New York. Demas Barnes, as assignee, against Theodore H. Vetterlein and others. (Copy.) Citation. T. M. Tyng, sol'r for appellants, 61 Wall St., N. Y. city. Allowed this 15th day of October, 1883. Wm. J. Wallace. U. S. circuit court. Filed Oct. 15, 1883. Timothy Griffith, cl'k.

139 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

I, Timothy Griffith, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to one hundred and thirty-eight, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Demas Barnes, as assignee, complainant, appellee, against Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernard T Vetterlein, impleaded, defendants, appellants, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 14th day of October, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the said United States the one hundred and ninth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

TIMOTHY GRIFFITH, *Clerk.*

Endorsed on cover: S. New York C. C. U. S. No. 104. Theodore H. Vetterlein, Theodore J. Vetterlein, and Bernhard T. Vetterlein, appellants, *vs.* Demas Barnes, assignee in bankruptcy of Theodore H. Vetterlein and Bernhard T. Vetterlein. Filed 15th October, 1884.

124-169

DEC 2 1887

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THEODORE H. VETTERLEIN *et al.*
Appellants,

vs.

DEMAS BARNES, *Assignee in Bankruptcy, &c.*

No. 104.

Brief for Appellants.

JOHN D. McPHERSON,
CALDERON CARLISLE,
For Appellants.

T. M. TYNG,
Of Counsel.

R. O. POLKINHORN, PRINTER.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THEODORE H. VETTERLEIN *et al.*, *Appellants*,

vs.

DEMAS BARNES, *Assignee in Bankruptcy, &c.*

No. 104.

Brief for Appellants.

This cause comes up by appeal from the Circuit Court of the United States for the Southern District of New York. The appellants were defendants below.

An assignee in bankruptcy is seeking by a bill in equity, to have decreed to him absolutely the proceeds of certain life insurance policies, held by one of the bankrupts as collateral security for an unliquidated indebtedness of the assured due at one time to the two bankrupts, and two other persons, one of them a stranger to the suit, without making the personal representative of the assured a party.

One of the bankrupts who held the policies in trust as collateral, within six months of the institu-

tion of the bankruptcy proceedings, assigned them to the defendants, Theodore J. and Bernard T. Vetterlein, for the benefit of his wife and children, and the bill asks that this trust be decreed void as against the assignee, and that the whole fund be swept away from the *cestui que trustent*, without making any of them parties.

The only defendants are the insurance companies, Theo. H. Vetterlein, (the bankrupt who held the policies on the life of this stranger as collateral security for the unliquidated indebtedness due to himself and others,) and Theodore J. Vetterlein and Bernard T. Vetterlein—AS INDIVIDUALS.

Statement of the Case.

In the year 1867, one J. Kinsey Taylor being indebted on an unliquidated account, for advances made and to be made, by four persons, viz: Theodore H. Vetterlein, Theodore J. Vetterlein, Bernard T. Velterlein and Charles A. Meurer, trading in Philadelphia under the firm name of Vetterlein & Company, executed and delivered to said firm a judgment note for $50,000 and a mortgage for $8,000, as security for said indebtedness, and as additional security assigned to Theodore H. Vetterlein policies of insurance to the amount of $50,000 on his, Taylor's life, to be held by said T. H. Vetterlein as collateral security for the payment of the debt due by Taylor to the said firm of Vetterlein & Company. (Rec., pp. 6, 11, 46.) Neither Theodore H., nor any member of this firm had any insurable interest in the life of Taylor, unless as creditor, and then only to the ex-

tent of Taylor's indebtedness, as it might appear in a final accounting with him or his estate. Later, $40,000 of Taylor's indebtedness, seems to have been forgiven and written off to profit and loss, and by an arrangement between the original creditors, Taylor and the Insurance Companies, the life policies were reduced to $10,000, leaving those and the $8,000 mortgage as security for a balance of about $11,000 due in 1869. (Rec. pp. 46.)

Neither the policies, nor the assignment of them as collateral for the debt of Taylor, nor the subsequent assignment for the benefit of the wife and children of Theodore H. Vetterlein, are in the record, but the bill alleges that the policies were payable to the personal representatives of Taylor. (Rec., p. 2.) It does not appear that Theodore H. Vetterlein was specifically given any power of disposition over the policies, or was authorized by Taylor to do anything more than "HOLD" them as collateral security. (Rec., p. 2.)

On July 1st, 1869, the first firm of Vetterlein & Company was dissolved by the retirement of C. A. Meurer, and a second firm was formed by the remaining partners, (Rec., p. 7, 40,) which was in turn dissolved by the retirement of Theodore J. Vetterlein on December 31, 1869. (Rec., p. 40.) These two firms were always solvent and appeared to be still in liquidation. (Rec., pp. 41, 42, 47, 48.)

In July, 1869, there existed in New York another firm trading under the name of T. H. Vetterlein & Sons, composed of Theodore H., Theodore J. & Bernard T. Vetterlein. (Rec., p. 42.) In December, 1869, Theodore J. retired from the New York firm,

as well as from the the Philadelphia firm, and both these firms were thenceforth composed of Theodore H. & Bernard T. Vetterlein. (Rec., p. 42.) It does not appear that Taylor ever had any dealings whatever with any Vetterlein firm in New York, or that he had any dealings after 1868 or 1869 with Vetterlein & Company of Philadelphia; certainly he had none with the Philadelphia firm formed in 1870.

The firm of T. H. Vetterlein & Sons was in the year 1869 sued by the United States for $540,000, the value of merchandise imported by them (Rec., p. 24), and owing to this and other causes they called a meeting of creditors in May, 1870. (Rec., p. 47.)

At this meeting a committee, after examining the affairs of both the New York and Philadelphia houses, reported that they had "an excess of $195,740.05 of undoubted value over all liabilities." Demas Barnes, the complainant below, was one of this committee, and signed their report. (Rec., p. 15.) He was also one of the creditors who agreed to an extension recommended by that report. This extension was not asked by the Vetterlein's, and was not rendered necessary by any demands of creditors's, but was was recommended by this committee for the convenience of the firm and to avoid unnecessary sacrifices.

In July, 1870, Theodore H. Vetterlein appears to have assigned these policies of insurance on the life of Taylor, who was then about 30 years of age, and in robust health to Theodore J. and Bernard T. Vetterlein, in trust for the benefit of his wife and children. On December 28th, 1870, certain creditors filed a petition in Bankruptcy against Theodore H. and

Bernard T. Vetterlein, jointly and severally, and they were adjudicated bankrupts on the 7th day of February, 1871, and Demas Barnes was, on March 14th, 1871, appointed assignee.

In the meantime, and even after the adjudication in Bankruptcy, the premiums or interest notes on the Taylor life policies had been kept up by the Vetterleins, and in July, 1871, Taylor died. (Rec. pp. 3, 9.)

On the 10th day of August, 1871, Barnes, assignee, filed this bill against Theodore H., Theodore J. and Bernard T. Vetterlein, and against the Insurance Companies, to set aside the assignment for the benefit of the wife and children of Theodore H. Vetterlein, and praying that the policies and their proceeds be adjudged to belong absolutely to the assignee.

A receiver was appointed, the Insurance companies paid him the amount of the policies, $10,000; a mass of testimony was taken; commissions and expenses were paid from the fund, and the case went to sleep until the year 1882—ten years. It was then brought to a hearing and the District Court adjudged the assignment void and the fund to belong to the plaintiff, Barnes, the assignee, and accordingly decreed the fund to be paid to him. The District judge found that the firm was, July, 1870, insolvent—which was not alleged in the bill—and on appeal to the Circuit Court the decree was affirmed. But the Circuit judge, while noticing that the insolvency of the firm was not alleged, found that the insolvency of Theodore H. Vetterlein—which was not proved or attempted to be proven—was alleged and was sufficient to support the decree, on the ground that the

firm allowed him to treat the policies as his own. (Rec. p. 95.) Notwithstanding that, the answers deny it was done with their knowledge and consent. (Rec. pp. 8, 13.)

It seems to us that there are radical defects in complainant's theory of his rights and remedy, and in his proceedings which should have prevented the rendition of any decree in his favor, and the following errors are assigned:

The decree is erroneous.

1. Because the bill is demurrable for want of equity

2. Because the bill is defective for want of necessary parties.

3. Because policies of insurance upon the lives of strangers living at the time of bankruptcy and held by bankrupt did not pass to assignee under the bankrupt act.

4. Because property held in pledge or trust by a bankrupt does not pass to the assignee except to the extent of his beneficial interest.

5. Because the bankrupts never had a separate right of property in the policies, but, if any, jointly with others.

6. Because the evidence fails to establish the insolvency of Theodore H. Vetterlein at or before the time of the alleged transfer by him.

7. Because the allegations of the bill do not afford foundation for the decree.

8. Because the evidence is insufficient to support the decree.

Points.

I.

The validity and extent of the assignment by Taylor of the policies on his life depended wholly upon whether he was indebted at all, and in what sum, to the parties secured, and the interest of anyone, claiming under that assignment, in the proceeds of the policies, depended upon the subsisting indebtedness of Taylor.

In *Cammack* vs. *Lewis*, 15 Wallace, 643, and *Warnock* vs. *Davis*, 14 Otto, 775, this Court has expressly held that a sale or transfer of a policy on the life of a living person to one not having an insurable interest in the life of such person, is absolutely inoperative to pass till in the policy.

The decision in 14 Otto proceeds on the principle that all life insurance as a wager, is void except as to certain excepted persons; and that even a paid-up policy cannot be transferred to a stranger.

II.

The fundamental fact of the subsisting indebtedness of Taylor, and its amount, on which the rights of the bankrupts and their assignee depended cannot be determined in any suit to which Taylor's administrator is not a party.

He is a necessary and indispensable party.

By the bill it is averred that the policies in question, were assigned by the owner, J. Kinsey Taylor, to "T. H. Vetterlein, one of the said bankrupts, to be held by him as collateral security for the payment of the said indebtedness of Taylor to the said bank-

rupts." (Rec. p. 2) This is the only averment as to the terms of the assignment to Vetterlein. The evidence discloses nothing more save that what was intended to be secured was not a liquidated and ascertained amount, but was a current indebtedness, that is moneys due and moneys to become due on future transactions.

There was no power given the assignee to do more than "hold" the policies, no direction how the amount of the debt should be ascertained, or how the policies should be used to satisfy it. The policies then remained the property of the assured with only a special property in the creditors, [Story Eq., Jur., 1030], and could only be reached and his title divested by proper proceedings, [Story Eq., Jur., Sec. 1031; Kent's Com., IV., 138], after default made, and no such proceedings were had. There never was any accounting between the parties; no demand was ever made for the payment of the debt; consequently the assured was never in default.

The assignor was entitled at any moment until default made and until suit brought to pay the debt and redeem his property. After his death his legal representative had the same right. [Story Eq., Jur., 1031; Kent's Com., IV., 138.] In a suit to foreclose and sell property held to secure a debt any one who has a right to redeem is a necessary party.

In Tyler *vs.* Webb, 6 Beavan, 557, an equitable mortgagee filed a bill to enforce his lien and made not only the mortgagor a party, but made another equitable mortgagee and a subsequent purchaser also parties. This was made ground of objection, and the Master of the Rolls said:

"On the other hand it has been objected that the plaintiffs have unnecessarily made some of the defendants parties to the cause; but considering this as a bill of foreclosure, I think that every one of the defendants was a *necessary* party, because each of them had a right to redeem."

Moreover, Taylor or his legal representatives, had a right to the surplus, if any, after payment of the debt, and was therefore a necessary party, for in the absence of the debtor or his personal representative the amount of the debt could not be determined.

Mallow vs. *Hinde*, 12 Wheaton, 193;
Caldwell vs. *Taggart*, 4 Pet., 190;
Shields vs. *Barrow*, 17 How., 130;
Story vs. *Livingston*, 13 Pet., 359;
Carey vs. *Brown*, 92 U. S., 171;
Robertson vs. *Carson*, 19 Wall., 94;
Williams vs. *Bankhead*, 19 Wall., 563;
Barney vs. *Balto.*, 6 Wall., 280.

III.

The original assignment by Taylor was not to all the creditors directly, but to one of them to hold as collateral for himself and three others. All were necessary parties, and one of them, Meurer, is not made a party.

Authorities *ubi supra*.

IV.

Though both bankrupts might prove to be beneficially interested under this assignment, and to the extent of their beneficial interest, their assignee took

their place, it is neither averred nor proved that the bankrupts held the whole beneficial interest, and their assignee could only claim to stand in their place as tenant in common with the other parties interested *i. e.* insolvent partners of the original firm, and the only interest which could pass absolutely to the assignee was that which his bankrupts might appear to have on taking an account with the others.

5 Johns Ch., 60; Murray vs Murray

[redacted];

[redacted];

20 Vt., 25; Blin vs Pierce

2 Barb. Ch. 596; Ontario Bk. vs Mumford

[redacted].

V.

The two Vetterlein defendants are not made parties as trustees, and if they were, they do not appear to have been invested with such powers that their beneficiaries would be bound by what was done against them or by them.

Kerrison vs. *Stewart*, 93 U. S., 155.

VI.

The beneficaries the wife and children of Theodore H. Vetterlein, are indispensable parties, because the disposal of a fund which they claim is involved, and they are liable to have the whole fund swept away from them by the decree. This cannot be done.

Williams vs. *Bankhead*, 19 Wall., 563.

Bump, after stating that creditors whose debts are provided for in a fraudulent conveyance are not

necessary parties, adds: "But in other cases of trust the *cestui que trust* is a necessary party as well as the trustees, for the beneficiary owns the equitable and ultimate interest to be affected by the decree." (Bump Fraud. Con., p. 535, 2d Ed'n.) This is believed to be a fairly-stated and well-settled principle.

In this case, it is sought without making the administrators of Taylor, the assured, a party, to establish that he died indebted to complainant, as assignee, in the amount of the policies—without making Meurer a party, to decree that this solvent firm of which he was a member owed him nothing; without making Theodore J. and Bernard T. Vetterlein, as trustees, and the wife and children of Theodore H., as *cestui que trustents*, parties to sweep away from them a fund provided by a trust in which they had the equitable and ultimate interest to be effected by the decree. According to complainants' theory these beneficiaries were the only persons besides himself, who could have any right and, for aught that appears, through an insurable interest in Taylor's life, or through Taylor's administrator or Meurer, they may have a total or partial paramount right notwithstanding the bankruptcy laws.

If the complainant could have really established a case of absolute property in these policies, and was simply seeking, in disregard of equitable principles because they did not apply, to recover part of a bankrupt's estate or its value, then it seems to us that he had a complete and adequate remedy at law.

But if, on the other hand, he considered that the peculiar character of this property and the relations

of the parties would warrant and require a resort to a court of equity, he has not shaped his proceedings so as to enable a court of equity to make a decree in his favor.

As far as this court, and counsel who must inform it, can know from this record, Taylor may have paid every cent of his indebtedness. The old firm of Vetterlein & Co. may still be indebted to Meurer, and the wife and children of Theodore H. Vetterlein may have paid a full equivalent to him and his creditors and his assignee.

Some other considerations, in connection with the grounds upon which complainant seeks relief, may be appropriately submitted. It is contended that the transfer of the policies was by an insolvent debtor, out of the ordinary course of business and purely voluntary, and with the intent to hinder and delay his creditors.

In this connection, it should be observed that the proof of insolvency is not demonstrative, nor even conclusive, when viewed in the most favorable light. The called meeting of creditors is shown to have been due to an extraordinary demand upon the firm, and this complainant is committed to the statement that at that time the firm and its members were not only solvent, but were prosperous. The meeting was not called for the purpose of securing a composition with creditors, but to postpone payment, because if then made, it would be injurious to the interests of the debtor. The delay was not to enable the debtor to pay, but to avoid a sacrifice and for the debtor's accommodation.

It is significant that Barnes has not explained his

statement of the assets of the firm, which he appears to have been so competent to make.

Again, the thing transferred represented no property of value. Taylor, the assured, was then only thirty years of age, and of robust health. He actually survived until after the adjudication in bankruptcy, and the appointment of the complainant as assignee, who did not, as such, and who could not divert the assigned estate to the payment of premiums for the purpose of keeping alive the policies.

Furthermore, there are the three sworn answers asserting the property in the assets of Vetterlein & Co., of Philadelphia, to be in Theodore J., and that his interest in that firm not paid to him, amounted to over $20,000. It seems clear that upon the merits, the complainant has not established his case; certainly not by such a preponderance of testimony as is required in such a case.

It is also apparent, that with issues so inadequately defined by, and a case so far at variance from the pleadings, and with the real parties in interest not before the court, the salient points of the case could not be so adequately presented in proof as would be expected under other conditions.

But it is submitted that, whatever view this court may take of the merits of the controversy, it cannot afford to sanction such a proceeding as the one in question—and whatever may be the doubts as to whether such a decree will do substantial justice as between *these* parties, this court can find but one solution of the present case, viz: to reverse the decree below and dismiss the bill with costs.

To affirm this decree would create a precedent for the perpetration of [redacted] frauds under the guise of proceedings in equity by obtaining decrees against the rights of parties who have not had their day in court.

Unless the fundamental principles of equity jurisprudence, pleading and practice are to be altered by the decision of this honored tribunal, the decree herein must be reversed and the bill dismissed.

JOHN D. McPHERSON,
CALDERON CARLISLE,
For Appellants.

T. M. TYNG,
Of Counsel.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1887.

No. 104.

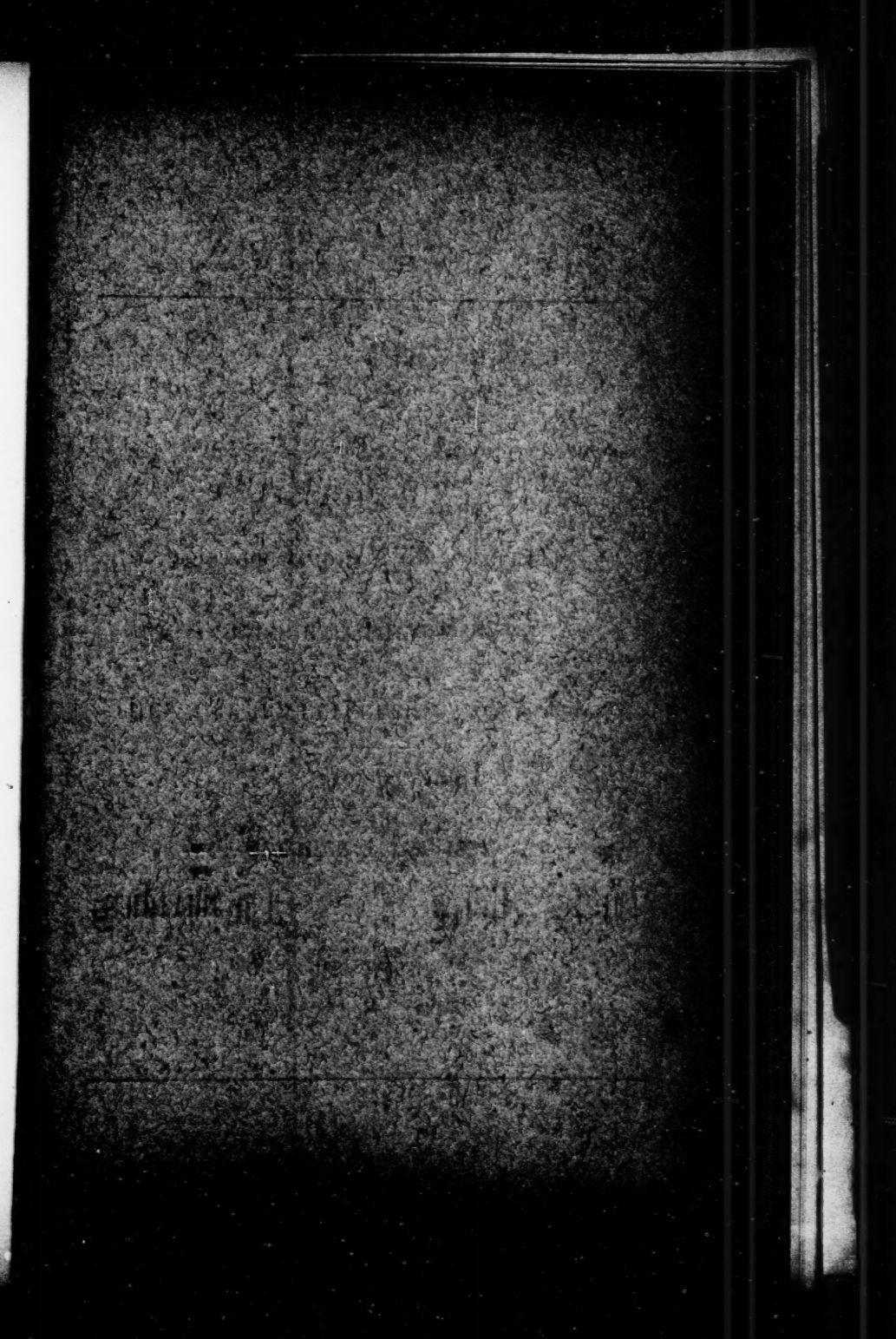
THEODORE H. VETTERLEIN ET AL., APPELLANTS,

vs.

DEMAS BARNES, ASSIGNEE, &C.

POINTS OF ARGUMENT FOR APPELLANTS.

T. MITCHELL TYNG,
Counsel for Appellants.



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POINTS OF ARGUMENT FOR APPELLANTS.

There are two questions (*inter alia*) in this case: (1) Whether the appellee, Demas Barnes, as assignee of Theodore H. and Bernhard T. Vetterlein, became the beneficiary (*the assured*) of the policies in question by virtue of his appointment (March 7, 1871), and so entitled to maintain an action upon the policies to recover the insurance moneys upon the subsequent death of Taylor (*the insured*), but for the assignment of July 18, 1870, alleged to have been fraudulent and void; (2) whether that assignment was in fact fraudulent and void as against the complainant.

THE BILL AVERS—

1. That the policies of insurance for $10,000 on the life of Taylor were, but for the assignment of July 18, 1870, the

property of the bankrupt firm of Vetterlein & Co. at the time of the bankruptcy, and the property of that firm in such a sense and of such a character that they passed to its assignee.

2. That the assignment of July 18, 1870, was the act of the bankrupt firm, and that, by reason of certain alleged conduct *of that firm* in contravention of the bankrupt act, this assignment is void as against its assignee.

3. That (as a corollary therefrom) the said policies of insurance and the proceeds thereof and the right to collect and receive the amount accrued or accruing thereon vested in the appellee, as the duly appointed assignee of the firm.

THE DISTRICT COURT ADJUDGED—

1. That the bankrupt firm was, at the time of the assignment of July 18, 1870, entitled to the entire beneficial interest in the policies of insurance.

2. That the assignment of July 18, 1870, was an assignment made by *the firm* of *its* property, and was invalid as against *the firm's creditors.*

3. That the right to collect the amount of the policies in question was vested in the assignee at the time of commencing this action.

On appeal to the circuit court we contended that the insolvency or contemplation of insolvency *of the firm* on July 18, 1870, was not averred in the bill, and that upon the facts averred and found by the district court the bill was defective for want of that allegation. Our objection was sustained. The circuit court say (page 95): "If the policies had been

"assigned by the firm the bill would be defective in omitting "to allege the insolvency or contemplation of insolvency of "the firm at the time." But, instead of dismissing the bill

THE CIRCUIT COURT ADJUDGED—

1. The policies had become the property of Theodore H. Vetterlein.

2. He was in contemplation of insolvency at the time of the assignment of July 18, 1870.

3. The assignment was void for his fraud.

The present appeal is from this last adjudication, and the propriety of that adjudication is under review. We contend that there is no allegation or proof tending to sustain any of the facts on which *this* adjudication rests. The learned courts below concur in result, but differ widely as to the facts on which their respective conclusions rest. *None of the written assignments referred to in the bill have been introduced in evidence in this case.*

I.

THE ASSIGNEE HAS NO RIGHT TO THE PROCEEDS OF THE POLICIES IN QUESTION.

1. His entire claim is that he became the beneficiary of these policies (March, 1871) during Taylor's life, and that therefore upon Taylor's death (July 1, 1871) he was the person to collect and receive the insurance moneys; and it is conceded that if the entire beneficial interest in these policies did not vest in him officially, by virtue of his appointment and by relation to December 28, 1870, the judg-

property of the bankrupt firm of Vetterlein & Co. at the time of the bankruptcy, and the property of that firm in such a sense and of such a character that they passed to its assignee.

2. That the assignment of July 18, 1870, was the act of the bankrupt firm, and that, by reason of certain alleged conduct *of that firm* in contravention of the bankrupt act, this assignment is void as against its assignee.

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ment appealed from is erroneous and the bill must be dismissed.

2. Let all questions as to the character of the property be (*for the time*) disregarded and the policies treated as if they were ten coupon bonds of $1,000 each, and let it be assumed that the assignment of July 18, 1870, was never made, and that the policies remained up to the time of the commencement of this action in the possession of Theodore H. Vetterlein, under the original bailment of July 6, 1867, still the assignee took no title to the fund under his assignment.

3. It is conceded that this bailment of July 6, 1867, was a trust not terminated when the present bill was filed, and a trust of which three other parties than the bankrupts were the beneficiaries. The court below has so held. No right of action in respect to this trust vested in the assignee by virtue of his appointment, except such as was in the bankrupts at the time the petition was filed against them. This was to have the trust terminated and their interest in the subject-matter thereof established in a proper action between the necessary parties. Such an action the assignee has not brought, and the present bill cannot be turned into a bill for that relief: (1) because it has no appropriate averments, and (2) because two of the beneficiaries of that trust, the estate of Taylor and Charles A. Merner, are not before the court. Pending the trust, the bankrupts had no estate in the subject-matter thereof, as the title to the property pledged remained in Taylor, the pledgor, and in his personal representatives.

II.

THE FIRST OF THE THREE SUCCESSIVE FIRMS WAS THE BENEFICIARY OF THE BAILMENT OF JULY 6TH, 1867.

It is conceded that the *first firm* of Vetterlein & Co. (dissolved July 6, 1869) was "*the existing firm*," to which Taylor was indebted in July, 1867 (p. 60). "He was not indebted "to the firm of Vetterlein & Co., which was adjudicated "bankrupt, in any way or in any amount" (p. 46). This fact is determined by the opinion of the district judge (p. 88).

The interests of the respective partners in this first firm were as follows (pp. 40, 66):

Theodore H. Vetterlein (bankrupt)	50	per cent.
Charles A. Merner	20	"
Theodore J. Vetterlein	15	"
Bernhard T. Vetterlein (bankrupt)	15	"
	100	"

If, therefore, it be assumed that the entire amount of the policies belonged to this first firm for whose benefit they were pledged, 15 per cent. of the money would belong to Theodore J. Vetterlein and 20 per cent. to Merner, and yet this entire fund has been awarded to the assignee for distribution among the creditors of those who were only entitled to 65 per cent. thereof.

The district judge and the circuit judge both declare (pp. 88, 95) it to have been proved "that on the 18th July, "1870, neither Mr. Merner or Theodore J. Vetterlein had "any valuable pecuniary interest in the assets of the two

"former firms or in the policies in question." *Of this there is neither averment nor proof.* The bill proceeds upon the theory that the indebtedness of Taylor was to the third or bankrupt firm, and that the policies were pledged to secure that indebtedness to the bankrupts. The entire action rests upon the proposition that neither Merner nor Theodore J. Vetterlein ever had any interest whatever in the policies or their proceeds. It is now conceded that they owned an undivided 35 per cent. interest in the subject-matter of that trust, and there is no evidence, direct or circumstantial, that they ever parted with that interest to any one.

The only evidence tending to show that the bankrupt firm, as such, ever had any interest in Taylor's debt is the the transfer of that debt to the bankrupts' books on the 21st December, 1870 (Exhibit 16, pp. 65, 66), five months after the policies had been assigned for the benefit of the wife and children of Theodore H. Vetterlein. How or why this entry was made is not shown, nor is it pretended that if it were an assignment of the debt it is founded upon any consideration. The only proof made upon the subject is that this entry "was made by Theodore J. Vetterlein after his return "from Europe, and eleven months after his retirement from "the firm, and in the books of the firm with which he had "no connection" (p. 65).

It is conceded that unless the policies passed to the bankrupt firm by virtue of their entry, that firm never had or acquired any interest in them or in the indebtedness of Taylor for which they were pledged.

III.

THE FRAUD ALLEGED IN THE BILL HAS NOT BEEN PROVED AGAINST ANY ONE.

1. It is not averred that the firm of Vetterlein & Co. were insolvent or contemplated insolvency on the 18th July, 1870, nor is there a particle of proof tending to show that Theodore H. Vetterlein contemplated insolvency on that date.

Not one word is uttered as to the extent of his private means, and there is no suggestion that he personally owed any one one dollar. The entire evidence is directed to the financial condition of his firm, *whose insolvency or contemplation of insolvency is not averred.* He testified (pp. 50, 51) that, at the time of this assignment, he was solvent; that he did not believe himself insolvent; that his firm was solvent, to the best of his knowledge and belief, and that up to that time he had no reason to suppose that either he or his firm would become insolvent. He swears that the assignment was not not made with any intent to evade the provisions of the bankrupt act or to defraud his creditors, and that Taylor was at the time a young man in robust health, and there was nothing to indicate that the policies were likely to become payable soon; and there is not a word of testimony in the record tending to contradict him.

2. Nor is there a word of testimony tending to show that the assignment of these policies was "not made in the usual and ordinary course of business of Theodore H. Vetterlein." If the policies belonged to him he had a right to dispose of them, so far as the complainant is concerned, in any manner not prohibited by the bankrupt act. He testified (p. 52)

that he transferred these policies for the benefit of his wife, in lieu of increasing the insurance on his own life, these policies being mainly fully paid up and the premium necessary to be paid on policies issued on his life being very large. If Theodore H. Vetterlein was solvent, and believed himself to be so, it certainly was not an abnormal act to transfer as small an asset as this for the benefit of his family. If the property had been $10,000 Government bonds the transaction, under the circumstances, would have been natural and normal.

3. The testimony does not show that either of the bankrupts or their firm were insolvent or contemplated insolvency on the 18th July, 1870.

The report of a committee of their creditors, signed by the complainant as a member of that committee, and adopted by all their creditors, shows that the bankrupt firm was not insolvent on the 24th May, 1870; and the *six months'* notes set up in the petition, on which they were adjudicated bankrupts, did not mature till November 28, 1870. On the 24th May, 1870, they had a surplus of $195,740.45 of undoubted values over "all liability, besides leaving a large margin contingent," &c. (page 57), and on the 12th September, 1871, the complainant admits that the value of their assets amounted to $371,324.80. All the claims against them, disputed and otherwise, including the Government claim of $100,000, were $238,100 (page 37).

4. There is no proof tending to show that the assignment of July 18, 1870, was in fraud of creditors, within the meaning of section 5046. That requires proof of actual fraud or dishonest intent—not implied fraud consistent with

good faith. In *Stewart* vs. *Dunham* (115 U. S., 6.) the court held it to be a grave charge, of which the law requires convincing proof. The conceded facts are that Theodore H. Vetterlein intended to increase the insurance on his own life for the benefit of his family, and instead of so doing assigned these and other policies in trust for that purpose, because the latter were paid-up policies, requiring no further payments of premiums, while the annual premium for insurance on his life at his advanced age would be very heavy. It may be that his intentions were ineffectually carried out, and that the law did not sanction the transfer, but it was not shown that his intent was dishonest. The fact that the conveyance was voluntary and without consideration does not of itself imply fraud.

T. Mitchell Tyng,
Counsel for Appellants.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

THEODORE H. VETTERLEIN *et al.*
Appellants,

vs.

DEMAS BARNES, *Assignee, &c.*

No. 104.

Points of Argument for Appellants.

CALDERON CARLISLE,
For Appellants.

R. O. POLKINHORN, PRINTER.

In the Supreme Court of the United States.

OCTOBER TERM, 1887.

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vs.

DEMAS BARNES, *Assignee, &c.*

No. 104.

Points of Argument for Appellants.

The subject-matter of this suit is the proceeds of certain policies of life insurance on the life of one J. Kinsey Taylor, deceased, claimed by one Demas Barnes, the complainant in this action as assignee in bankruptcy of Theodore & Bernhard T. Vetterlein, who were jointly and severally adjudicated bankrupts on February 7, 1871.

The policies were payable to Taylor's legal representatives, but neither of the Vetterleins nor the complainant is such legal representative, nor does any one of them stand in such a relation of consanguinity to the assured as to have an insurable interest in his life.

It therefore follows that the complainant must establish his title upon some other legal ground than as direct beneficiary under these policies.

The bill of complaint is too uncertain in its averments to afford any distinct description or theory of the title claimed, but the Circuit Court bases the title of the assignee upon the ground that the policies had been assigned to Theodore H. Vetterlein as collateral security for a debt, which debt it finds to have been, at the time of the adjudication in bankruptcy, and at the time of the alleged assignment by him of the policies for the benefit of his wife and children, the property of the bankrupts, and the said assignment by him to have been without consideration and void. In other words, the court finds that Theodore H. and Bernhard T. Vetterlein had an in insurable interest, as creditors, in the life of Taylor, and that this interest, in so far as represented by these policies, was exclusive in the bankrupts.

With all due respect to the learned judge of the Circuit Court, it is respectfully submitted that this view cannot be supported—

(1.) Because it is not the case alleged in the bill;
(2.) Nor is it established by competent proof;
(3.) Because the parties essential to such a finding are not before the court.

I.

The bill alleges that Taylor was indebted to the bankrupts estate as "Th. H. Vetterlein & Son," or as "Vetterlein & Co.," in a definite sum, and that the policies were given to secure that indebtedness. That Theodore H. held them as collateral for that purpose, and had assigned them to Theodore J. and Barnhard T., in trust for the benefit of the wife and

children of Theodore H. in fraud of the rights of the assignee.

The proof, however, shows that the assignment by Taylor was made, before the two firms referred to had any legal existence and to secure an indebtedness due to a wholly distinct firm, in Philadelphia, composed not only of legally but of actually different persons. No identity of interest in the two firms is alleged nor is it alleged that the rights of that firm were succeeded to, by way of assignment, or otherwise, by the bankrupts—indeed the existence of the first firm is not noticed in the bill.

The case made by the proofs is wholly distinct from the case attempted to be proved and found by the Circuit Judge and from the allegations of the bill, and, as was very clearly stated by this Court, a complainant can no more recover upon a case proved and not stated than upon one stated and not proved.

Foster vs. *Goddard*, 1 Bl., 518;
Boone vs. *Chiles*, 10 Pet., 209.

II.

Nor is the proof competent to support the case found by the Circuit Judge.

a.

The assignment of a policy of life insurance to one not having a direct interest in the life of the assured by reason of consanguinity is void on grounds of public policy as a mere wager. It may be good to secure a debt, but then only to the extent of the

debt and not as an absolute transfer of the entire interest.

Cammack vs. *Lewis*, 15 Wall.
Warnock vs. *Davis*, 14 Otto 775.

It is therefore essential, in order to make out a title in Theodore H. and Bernhard T., through whom complainant claims, to show that they had an insurable interest in the life of the assured as creditors, at the date of the adjudication in bankruptcy, and at the time of the institution of this suit.

b.

The proof shows, that Taylor was originally indebted, not to them, but to another firm, (Rec. pp. 6, 11, 46,) that he gave a judgment note to that firm for the entire amount, (Rec. pp. 6, 46,) and mortgage for eight thousand dollars, ($8,000,) (Rec. pp. 46, 55,) and that subsequently *that firm, his only established creditors*, cancelled all but ten thousand dollars, ($10,000,) of that debt. (Rec. pp. 46, 63.) Conceding, that under the pleadings complainant could show, and that by the proofs he has shown, the indebtedness and its collaterals to have passed to the bankrupts, still, it appears;

c.

That the policy was not assigned absolutely, (Bill p. 2 and Rec. p. 50,) but simply to secure a current *fluctuating account*, (Rec. pp. 6, 7,) and no proof is given that there was anything still due upon that account. All but ten thousand dollars was settled with the original creditors before the alleged claims

of the bankrupts arose, (Rec. p. 63,) without exhausting either the judgment note for $50,000 or the eight thousand dollars on mortgage. So that, so far from showing an existing indebtedness from Taylor to the bankrupts or to his original creditors, the proof shows that in 1869 Taylor was indebted to that firm in the sum of $10,000, for which they held $58,000 of security, exclusive of the policies. The record does not show whether anything was realized upon the judgment note nor that it was cancelled or released to Taylor's estate. Nor does it show that Taylor did not pay, from time to time, upon this indebtedness. But assuming that he did not, and that nothing was realized upon the note, it is still manifest that after applying the $8,000 mortgage to the $10,000 due, there would remain an indebtedness of only $2,000, or $8,000 less than the amount claimed by complainant. In any view of the case, this balance would not pass under the alleged assignment for as to that the policy would become a wagering one.

III.

But even if the allegations and proofs were sufficient, in a proper case, to sustain the findings of the Circuit Court, the necessary facts could not be established in this suit because the parties to be bound thereby are not before the court.

a.

Taylor's personal representative is not a party to this suit, and it is manifest that no *ex parte* accounting of his unliquidated transactions by a firm not his creditor but claimed, (not in the bill, but in the find-

ing of the Circuit Judge,) to be the successor to his creditors' rights and subrogated to them, could bind Taylor's estate. His creditors or personal representatives in the absence of lawful assignment are entitled to any balance on these policies after such accounting and without them no valid and subsisting debts under these policies can be established.

Barney vs. *Baltimore*, 6 Wall., 280;
Williams vs. *Bankhead*, 19 Wall., 563;
Mallow vs. *Hinde*, 12 Wh., 193;
Russell vs. *Clark*, 7 Cr., 69, 98;
Ribon vs. *R. R. Co.*, 16 Wall., 446, 450.

b.

But if this objection were removed, and the indebtedness of Taylor duly established so as to create an insurable interest as creditors, in the Philadelphia firm, still, Charles A. Meurer one of the members of that firm is not a party and his interest in the credits due to that firm can not be concluded by this decree. It is not alleged that the new firm had succeeded to his rights, it is not proved, and if it had been so alleged and the allegation followed by the most direct testimony, it would not be evidence against him, to deprive him of his rights. No degree of directness of allegation nor any weight of evidence can establish any fact as against one not made a party to the suit.

Shields vs. *Barrow*, 17 How., 130;
Caldwell vs. *Taggart*, 4 Pet., 190;
Carey vs. *Brown*, 92 U. S., 171;
Bank vs. *Carrolton R. R.*, 11 Wall., 624, 630, 631;
and cases cited *supra*.

c.

The same objection applies in the case of the wife and children of Theodore H. Vetterlein, the *cestuis que trust* under the alleged but unproved assignment for their benefit. It is not alleged that they had not an insurable interest in the life of the assured, nor is it so proved; the whole purpose of the bill is to deprive them of the benefit of an alleged assignment of property, claimed to have been made wholly for their benefit, but without giving them their day in court to show cause against this demand.

It is confidently asserted that this court has never passed a decree disposing of rights or property when the record shows that it is held or claimed by a stranger to the cause. Equity will dispose of the right, title and interest of the parties to the cause, but none other. This is a fundamental principle of jurisprudence which has been emphatically asserted in this court. (See cases *supra.*)

d.

There is no proof whatever of the alleged assignment. The pretended admissions in the answers and the testimony not furnishing the court with any specific information.

The answers would not be evidence of the fact even as against co-defendants, but both combined can have no force as against strangers to the cause.

It is submitted that in order to decree an assignment to be void, it must be proved to have been made as the court can not act upon an imaginary assignment. The vicious instrument must be exhibited to the court before it can decree its destruction and

cancellation. This has not been done, and there is, therefore, no subject matter before the court upon which it can act.

The language of this court in the case of *Mallow* vs. *Hinde*, 12 Wheat., 198, is strikingly applicable to the case at bar:

"In this case the complainants have no rights separable from, and independent of, the rights of persons not made parties. The rights of those not before the court lie at the very foundation of the claim, and a final decision cannot be made between the parties litigant without directly affecting and prejudicing the rights of others not made parties."

CALDERON CARLISLE,
For Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1887.

THEODORE H. VETTERLEIN AND OTHERS,
Appellants,

against

DEMAS BARNES,
Complainant and Respondent.

No. 104.

BRIEF FOR APPELLEE.

JAS. K. HILL,
HENRY T. WING,
For Complainant and Appellee.

HARRINGTON PUTNAM,
of Counsel.

Supreme Court of the United States.

THEODORE H. VETTERLEIN & others, Appellants, vs. DEMAS BARNES, as Assignee in Bankruptcy of THEODORE H. VETTERLEIN and others, Appellee.	No. 104.

Brief for Respondent and Appellee.

This is an appeal from a decree of the Circuit Court of the United States for the Southern District of New York, entered Oct. 5 1883, affirming a decree of the District Court, entered on the 16th day of January 1883, adjudging an assignment of three policies of insurance on the life of J. Kinzey Taylor fraudulent and void as against the complainant.

The action was brought to set aside a voluntary conveyance or assignment made by Theodore H. Vetterlein, one of the bankrupts, to Bernhard T. Vetterlein, the other bankrupt, and to one Theodore J. Vetterlein, in trust for the benefit of the wife and children of Theodore H. Vetterlein.

Bernhard T. Vetterlein and Theodore J. Vetterlein are both sons of Theodore H. Vetterlein.

The assignment is dated the 18th day of July, 1871 (see bill of complaint and answer), and the petition under which Theodore H. and Bernhard T. Vetterlein were ad-

judged bankrupts was filed December 28th, 1870 (see Complainant's Exhibits 1 and 2, Transcript, pp. 20, 21).

The bankrupt act (sec. 5129, sec. 35 old number), in force at the time of the assignment, provided, in substance, that if any person being insolvent, or in contemplation of insolvency or bankruptcy, within six months before the filing of the petition by or against him, makes any payment, sale, assignment, transfer, conveyance, or other disposition of any part of his property, to any person who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and that such payment, sale, assignment, transfer, or other conveyance is made with the view to prevent his property from coming to his assignees in bankruptcy, &c., the sale or assignment should be void.

The act also provides (sec. 5130) that the fact that such payment, pledge, sale, assignment, transfer, conveyance, or other disposition was not made in the usual and ordinary course of business of the debtor, shall be *prima facie* evidence of fraud.

J. Kinzey Taylor was a debtor of Vetterlein & Co., of Philadelphia, to a large amount. That firm was composed of Theodore H. Vetterlein, Bernhard T. Vetterlein, Theodore J. Vetterlein and Charles A. Meurer.

In 1867, Taylor, as a collateral security for his indebtedness to this firm, assigned to Theodore H. Vetterlein, one of the members thereof, a number of policies of insurance on his (Taylor's) life (Transcript, p. 39).

These policies were subsequently reduced in amount, and merged into the policies in question.

The reduced policies, amounting in the aggregate to $10,000, were nearly full paid, the premiums required to be paid upon them being but trifling in amount.

In July 1869, Mr. Meurer withdrew from the firm of Vetterlein & Co., and the business was continued in the same firm name by Theodore H. Vetterlein, Bernhard T. Vetterlein and Theodore J. Vetterlein, who took all the assets and paid all the liabilities of the firm.

On December 31 1869, Theodore J. Vetterlein withdrew from the firm, and the business was continued in the same firm name by Theodore H. Vetterlein and Bernhard T. Vetterlein, who, in turn, took all the assets and paid all the liabilities of the firm.

These two partners continued the business up to the time of the bankruptcy proceedings.

Points.

First.—It is clear that both Theodore H. Vetterlein and Bernhard T. Vetterlein were insolvent on the 18th day of July 1870, the date of the assignment.

The evidence shows:

1. That at the time of the assignment an action was pending against Theodore H. Vetterlein, Bernhard T. Vetterlein, and Theodore J. Vetterlein, brought by the United States to recover over $540,000, in which action the defendants subsequently confessed judgment for about $100,000, which remains wholly unpaid. (Complainant's Exhibit 3, Transcript, p. 24, and evidence of Theodore H. Vetterlein, Transcript, p. 77.)

2. That in the month of May 1870, and about two months prior to the assignment, Theodore H. Vetterlein and Bernhard T. Vetterlein called a meeting of their creditors, and secured an extension.

Testimony of Mr. Barnes, Transcript, p. 75.

The exhibit of the finances of the firms was prepared by Jacob Kuhlke, their bookkeeper. (Transcript, p. 48.)

The statement of the committee of the creditors as to the condition of the bankrupts in May 1870, and an-

nexed to the answer as Exhibit "A," on page 14, was a mere opinion, based solely on the statements of the bankrupts and their employees (Transcript, p. 59), at a time when they were seeking a favor from their creditors, and is no proof of solvency, and indeed can hardly be admissible as evidence.

The complainant says he did not make an investigation of their affairs except by inquiry. (Transcript, p. 75.)

3. That in December 1870, the bankrupts made what purported to be a general assignment of all their property for the benefit of their creditors, and that such property was inventoried by sworn appraisers, and by inventory filed in January, 1871, was inventoried at $86,656.82. (Complainant's Exhibit 10, pages 28–30.)

4. That on the 28th of December 1869, a petition in bankruptcy, on which they were subsequently adjudicated bankrupts, was filed (Complainant's Exhibit 2, page 21, and Complainant's Exhibit 1, page 20).

That the amount of debts proved in bankruptcy was over $350,000, and the amount of assets collected by the assignee about $112,000 in gross (see testimony of Mr. Sharp, pages 36, 37, inclusive, and of Mr. Barnes, page 74). The claim that the bankrupts were solvent at the time of the appointment of the assignee, in March 1870, is a weak invention.

The answers admit subsequent insolvency.

The statement that the assignee estimated the assets at $300,000 and upwards is unsupported.

The report he was required to file, and filed, as assignee, simply gave the amount of the book accounts, &c., as they appeared on the books of the bankrupts. Actual values were not required or given.

The allegation in the answer that the bankrupts subsequently became insolvent by losses by fire, and by the European war, is entirely unsupported by the testimony, and Theodore H. Vetterlein states in his

evidence that the property destroyed by fire was insured, and had nothing whatever to do with the bankruptcy (Transcript, p. 75).

But little, if any, reliance whatever can, in such cases, be placed upon the statements of the assignor that he had no reason to believe himself insolvent.

In re Graham, 3 N. B. Reg., 357, 361.
Kehr *v.* Smith, 20 Wallace, 31.

In the latter case this court set aside a voluntary conveyance of $7,000, where the grantor had assets to the amount of $16,132, and owed only $9,306.

Second.—A voluntary conveyance is manifestly not in the usual and ordinary course of business, and the presumption of fraud arising under the statute from the unusual character of the transaction, can only be overcome by proof that the assignees took proper steps to ascertain the pecuniary condition of the assignor.

6 N. B. Register, 357.

There is no evidence that the assignees made any inquiry or investigation whatever.

One of them was a member of both bankrupt firms at the time of the assignment, and the other had withdrawn within a year.

They were both parties to the action brought by the United States, and one of them at least was present at the meeting of the creditors at which an extension was granted (page 47).

Third.—But it is claimed that the policies in question were the property of Vetterlein & Co., composed of Theodore H. Vetterlein, Bernhard T. Vetterlein, Theodore J. Vetterlein and Charles A. Meurer, and that that firm as a firm was solvent and paid its debts, and that Theodore J.

Vetterlein, as the only remaining partner of a solvent firm, is the sole owner of these policies, and that therefore no title or interest ever passed to the complainant.

To this, there are a number of answers:

1. That Theodore J. Vetterlein has no interest in the assets of the former firms of which he was a member is *res adjudicata* (Memorandum of the Judgment Record Complainant's Exhibit 6, page 26.)

   He brought an action in the Circuit Court below against Demas Barnes, as assignee, &c., setting forth, among other things, that he was a member of the firm of Vetterlein & Co., of Philadelphia, until the 31st of December, 1869, when he withdrew, that there was a large amount due him from that firm; that the assignee had collected assets of that firm and claimed to hold other assets uncollected, and that the firm was never bankrupt, and asked for judgment for $50,000, and also for an accounting.

   Judge Choate, who tried the cause, decided the case against the complainant on the merits, as well as on the ground of the Statute of Limitations.

   Vetterlein *v.* Barnes, 6 F. R., 693.

2. Theodore J. Vetterlein, in fact, as appears from the evidence, independent of the judgment record in the action brought by him, withdrew or received all his interest in the firm.

   The evidence is (p. 67), that the books were written up as of the date when Theodore J. Vetterlein withdrew from the firm.

   His ledger account is brought down to January 31 1871, eleven months after he withdrew from the firm, and shows that he was indebted to the firm in $57.50. (Account Transcript, p. 70).

   In the meantime, and of the date of December 21, 1870, he had become indebted to the firm from which he had withdrawn, in the sum of $1,479.55, which was

charged to the firm of Theodore H. Vetterlein & Sons, and the account thus balanced. (Same account, p. 70.)

All other accounts with Theodore J. Vetterlein had been carried to this account. (Transcript, pp. 68 & 69.)

Under date of March 31 1870, three months after he withdrew, he was charged with his share of the losses (profit and loss account, $713.98, see page 68; also Journal entry, Complainant's Exhibit 20, page 86).

The balance remaining to his credit on the account (page 85) is carried to his account (page 70), and there absorbed.

There is no pretence that Theodore J. Vetterlein had any interest in the firm except as shown by the books of the firm. (Testimony of T. J. Vetterlein, p. 60, 6th and 7th answers: p. 61, 22d and 23d answers.)

Independent of the judgment record, it is as plain as figures can make it that Theodore J. Vetterlein, after his account was written up, had no interest in the firm of Vetterlein & Co., of which he was a member.

3. The answer alleges that Meurer, when he withdrew from it, was in debt to the firm, and that he had no interest in the assets.

If neither Meurer nor Theodore J. Vetterlein had any interest in the assets of the firm of which they were members, and there were no creditors as is alleged, the policies in question at the time of the assignment belonged solely to Theodore H. Vetterlein and Bernhard T. Vetterlein, the bankrupts.

4. Each succeeding firm of Vetterlein & Co. took the assets and paid the liabilities of the preceding firm.

The indebtedness of Taylor to the firm of Vetterlein & Co., after $40,000 had been written off to profit and loss, stood on the ledger of that firm on the 21st of December, 1870, at $11,560.14.

Complainant's Exhibit 16, pages 65, 86.

This was evidently treated as good and collectible, and the profit and loss accounts were made out on that theory.

It was transferred December 21, 1870, to the ledger of the bankrupts' firm from the ledger of the old firm.

> Complainant's Exhibit 13, page 79, fifth item from bottom of page.

This indebtedness of Taylor, including the $40,000 written off to profit and loss, appeared to be an asset of the bankrupt firm in the schedule of assets filed at the time they made their general assignment.

> Inventory, p. 29, third item from top of page.

Theodore H. Vetterlein testifies that the J. K. Taylor claim was taken by the last firm (page 36).

The policies, being only collateral to the indebtedness, follow the debt.

The fact that the last firm of Vetterlein & Co. paid the premiums on these policies as late as July 1870, is strong evidence that the new firm considered the policies as belonging to it.

> See Exhibit 11, page 33, and Journal entry, p. 35.

One of the premiums, it will be observed, was paid by the new firm even after the date of the assignment to Bernhard T. Vetterlein and Theodore J. Vetterlein, in trust. This claim that Theodore J. Vetterlein, as a partner of Vetterlein & Co., is the sole owner of the policies, it will be observed, is entirely inconsistent with the claim that Theodore J. and Bernhard T., as assignees, are the owners.

Fourth.—The assignment is void as against creditors, independent of sections 5129 and 5130 of the bankrupt act. Section 5046 of the act vests all such property in the assignee in bankruptcy.

Sedgwick *v.* Place, 12 Blatch. Rep., 163.
Spaulding *v.* McGovern, 10 N. B. Register, 188.
Cave *v.* Phelps, 39 N. Y. Rep., 164.

The fact that a similar assignment made at about the same time, to the same assignees upon the same trust, has been adjudicated to be void, is strong evidence in this case.

See Judgment Roll, Compl'ts Exhibit 5, page 26, and testimony, page 33.

Although this judgment was by default, that does not affect its force, and its validity cannot be attacked in this action.

Fifth.—The assignor and the assignees are the only necessary parties.

No case can be cited in which it has been held, that in an action brought to set aside an assignment or conveyance, on the ground that it is void as against creditors, the *cestui que trust* is a necessary party defendant.

In this case the assignees answered and alleged that the assignment was valid, and did not plead any defect of parties, nor does the record show any attempt to take any advantage of an alleged defect of parties until the argument of this appeal.

In case of McBurney *v.* Carson, 99 U. S., 567, this Court held, where the identical question was presented of non-joinder in an action to set aside a transfer as fraudulent, that it was a fatal objection that the point had not been raised below, Mr. Justice Swayne (p. 570), delivering the opinion of the Court, said:

"Here it has been insisted that all the other defendants to the amended bill should have been made parties to the supplemental bill also. To this objection it is a sufficient answer that it does not appear to have been taken below. It cannot therefore be taken here. Were we to hold otherwise, we should, in this respect, exercise original, instead of appellate, jurisdiction."